Supreme Court, U.S.
FILED

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No.

In the
Supreme Court of the United States

JiQiang Xu,

Petitioner,

v.

Michigan State University,
Michigan State University College of Education,
Dr. Kenneth A. Frank, Dr. Betsy J. Becker,
Dr. David E. Wright, and Dr. Cassandra Book,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case involves a university professor's theft of intellectual property belonging to Petitioner Xu, a foreign-born graduate student. Xu brought three claims pursuant to 42 U.S.C. § 1983. The district court dismissed his claims after finding the statute of limitations had run. The Sixth Circuit Court of Appeals affirmed.

The questions presented are as follows:

1. Whether the Sixth Circuit properly extended the '*Ricks/Chardon* analysis,' typically applied to employment discrimination claims, to a theft of intellectual property case. Is there a conflict between the Sixth Circuit's application of *Ricks/Chardon*, and the Ninth Circuit's decision in *Abramson v. University of Hawaii*, 594 F.2d 202 (9th Cir. 1979).

2. Whether the Sixth Circuit erred when it found that the Defendant University put Petitioner Xu on notice August 13, 2001, that his grievance would not proceed.

3. Whether the Defendant University's administrative grievance procedure violated due process.

4. Does newly discovered evidence require reversal.

PARTIES TO THE PROCEEDINGS

The parties are JiQiang Xu ("Petitioner" or "Xu") and the respondents Michigan State University ("University"), Michigan State University College of Education ("College"), Dr. Kenneth A. Frank ("Frank"), Dr. Betsy J. Becker ("Becker"), Dr. David E. Wright ("Wright"), and Dr. Cassandra Book ("Book"). No publicly held or traded corporation is involved in this matter or not named as a party.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceedings ii

Table of Contents iii

Table of Authorities v

Jurisdiction 1

Opinions Below 1

Constitutions and Statutory Provisions Involved 1

Statement of the Case 2

Reasons for Granting the Writ 8

Argument

I. THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN FINDING THE THREE-YEAR STATUTE OF LIMITATIONS PERIOD HAD RUN 9

II. THE UNIVERSITY'S ADMINISTRATIVE GRIEVANCE PROCEDURE VIOLATED DUE PROCESS 19

III. NEWLY DISCOVERED EVIDENCE REQUIRES REVERSAL 22

Conclusion 24

APPENDIX

Appendix A: 8/24/06 Circuit Court Opinion 1a

Appendix B: 2/23/05 District Court Opinion 12a

Appendix C: 2/23/05 District Court Judgment . . . 18a

Appendix D: 12/7/04 District Court Complaint . . . 20a

Appendix E: 1/20/05 Plaintiff's Index to Brief in Opposition to Motion to Dismiss 59a

Appendix F: 3/15/05 District Court Notice of Appeal and attached Judgment 154a

Appendix G: 6/21/02 Letter to M.P. McPherson and L.A.K. Simon from D.E. Wright 158a

Appendix H: 5/18/02 E-mail to H. Burns from C. Book 161a

Appendix I: 11/15/06 Letter to J. Xu from U.S. Supreme Court 163a

Appendix J: 9/15/06 Letter to J. Lovewell from T. Kelley 165a

Appendix K: 9/12/06 Record Request 166a

TABLE OF AUTHORITIES

Cases

Abramson v. University of Hawaii,
594 F.2d 202 (9th Cir. 1979) 8, 10, 14

*Boykins v. Fairfield Board of Educatio*n,
492 F.2d 1234 (5th Cir. 1970) 22

Carroll v. Wilkerson,
782 F.2d 44 (6th Cir. 1986) 9

Chardon v. Fernandez,
454 U.S. 6, 102 S.Ct. 28,
70 L.Ed.2d 6 (1981) . . . . . *passim*

Conlin v. Blanchard,
890 F.2d 811 (6th Cir. 1989) 10

Daniels v. Fesco Div. of Cities Serv. Co.,
733 F.2d 622 (9th Cir. 1984) 10

Delaware State College v. Ricks,
449 U.S. 250, 101 S.Ct.
498, 66 L.Ed.2d 431 (1980) . . . . . *passim*

*Dixon v. Anderso*n,
928 F.2d 212 (6th Cir. 1991) 9

Flaherty v. Metromail Corp.,
235 F.3d 133 (2nd Cir. 2000) 10

Goss v. Lopez, 419 U.S. 565;
95 S.Ct. 729, 42 L.Ed.2d 725 (1975) 21

Harris v. Ladner,
127 F.3d 1121 (D.C. Cir. 1997) 14

Kelly v. Burns,
415 F.3d 558 (6th Cir. 2005) 20

Levine v. Torvik,
986 F.2d 1506 (6th Cir. 1993) 20

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986) 17

Mathews v. Eldridge,
424 U.S. 319; 96 S.Ct. 893;
47 L ed 2d 18 (1976) 21

McWane, Inc. v. Fidelity & Deposit Co. of Md.,
372 F.3d 798 (6th Cir. 2004) 17

Metts v. The University of Nevada-Reno,
301 F. Supp. 2d 1247 (D. Nev., 2004) . . . . . *passim*

Mull v. Arco Durethene Plastics, Inc.,
784 F.2d 284 (7th Cir. 1986) 10

Purisch v. Tenn. Tech. Univ.,
76 F.3d 1414 (6th Cir. 1996) 20

Rivera-Muriente v. Anglo-Alicea,
959 F.2d 349 (1st Cir. 1992) 10

Servier v. Turner,
742 F.3d 262 (6th Cir 1984) 9

Sunshine v. Long Island University,
862 F. Supp. 26 (E.D. N.Y. 1994) 14

Thompson v. Keohane,
516 U.S. 99 (1995) 20

Wade v. Knoxville Utils. Bd.,
259 F.3d 452 (6th Cir. 2001) 10

Withrow v. Larkin,
421 U.S. 35; 95 S.Ct. 1456;
43 L.Ed.2d 712 (1975) 22

Womack-Scott v. Department of Corrections,
246 Mich. App. 70; 630 N.W.2d 650 (2001),
appeal denied, 636 N.W.2d 143 (Mich. 2001) 19

Statutes

28 U.S.C. § 1367(c)(3) 2, 7

42 U.S.C. § 1983 . . . . . 2, 9

Mich. Comp. Laws § 600.5805(10) (2005) 9

Court Rules

Fed. R. Civ. P. 56 . . . . . 7, 17

PETITION FOR A WRIT OF CERTIORARI

Mr. Xu respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was issued on August 24, 2006 (Pet. App. 1a-11a). Petitioner timely filed an application to extend the time to file a petition for certiorari. On November 15, 2006, Justice Stevens granted the application and extended the time for filing this petition from November 15, 2006, to January 22, 2007 (Pet. App. 163a). The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1254(1).

OPINIONS BELOW

The original opinion of the United States District Court for the Western District of Michigan, Case No. 5:04-CV-210 was issued on February 23, 2005 (Pet. App.12a). The opinion of the United States Court of Appeals for the Sixth Circuit was issued on August 24, 2006 (Pet. App. 1a-11a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal constitutional provisions involved are as follows:

U.S. Const., First Amendment:

> The First Amendment provides, in pertinent part: Congress shall make no law . . . abridging the

freedom of speech, or of the press ; or the right of the people . . . to petition the Government for a redress of grievances."

U.S. Const., Fifth Amendment:

The Fifth Amendment provides, in pertinent part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

U.S. Const., Fourteen Amendment, Section 1:

Section 1 of the Fourteenth Amendment reads in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case centers on a University professor's theft of intellectual property belonging to a foreign-born graduate student with limited English proficiency. Petitioner Xu brought three claims pursuant to 42 U.S.C. § 1983. The complaint pled First Amendment claims and due process and equal protection claims under the Fourteenth Amendment of the United States Constitution. The federal district court granted summary judgment as to all of the federal claims. The district court exercised its discretion under 28 U.S.C. § 1367(c)(3) to dismiss Xu's state law claims without prejudice.

Xu appealed and argued that the district court erred in finding that the injuries giving rise to his cause of action occurred more than three years prior to the filing of his lawsuit. The Sixth Circuit Court of Appeals affirmed the grant of summary judgment as to the first two claims on statute of limitations grounds. As to the third claim, although it was "possibly brought within the applicable limitations period," summary judgment was deemed to be appropriate upon a finding of no genuine issue for trial.

A. Background

During March 1994 Mr. Xu was admitted into the Measurements and Quantitative Methods doctoral program, in the Department of Counseling, Educational Psychology and Special Education, of the College of Education (the "College") at Michigan State University (the "University"). He was assigned as his advisor, Dr. Kenneth Frank ("Frank"), who would later become his dissertation advisor.

Xu successfully defended his dissertation before the Department's "doctoral advisory committee." He was advised to publish the dissertation. Xu is of Chinese descent having been born and raised in China. Therefore, during the fall of 1996, Frank helped Xu correct errors in the proper use of the English language within Xu's paper.

In the spring of 1998, Xu learned that Frank had re-written the dissertation under his own name and submitted it for presentation at a conference held in Barcelona, Spain in early 1998 (Pet. App. 24a). Though his rationale for doing so is not clear, it appears that Frank alleged that he deserved credit for assisting Xu make his dissertation more "publishable."

In December 1998, Xu submitted his final dissertation to complete his graduation requirements. Six months later, Xu learned that his doctoral degree had not been awarded because Frank had not processed his dissertation.

At the time Xu was to receive his doctoral degree, and at all times relevant hereto, the University had a written policy to protect the "rights, protections, and guarantees of fair treatment" (Pet. App. 62a-122a). The guidelines apply to both undergraduate and graduate students. Relevant portions are set forth at 2.3-2.4 of the University handbook (Pet. App. 76a-85a). These rights include:

> (5) Both students and faculty share the responsibility for maintaining the integrity of scholarship, grades, and professional standards. 2.3.7
>
> ***
>
> (9) Right to be protected from personal exploitation and to receive recognition for scholarly assistance to faculty. 2.3.12

To implement these goals and standards, administrative grievance procedures governing the University exist. They included actions at the departmental level (5.1.2 and 5.3.2), a Hearing Board (5.4.3), and an Appeal Board (5.4.12). (*See* Pet. App. 96a-107a).

On October 18, 1999, Xu filed a Department-level complaint claiming that Frank had stolen Xu's work and that Xu was wrongfully denied a doctoral degree. Xu was told his grievance would be handled at the "lowest administrative level," under 5.3.6.2 of the handbook (Pet. App. 101a). This involved informal discussions. No formal review before a

'board' was offered. Dr. Betsy Becker investigated the matter. She made several proposals, none of which involved Frank admitting his wrongdoing. Xu rejected these proposals.

On January 11, 2001, Xu contacted the College about the next step in appealing (Pet. App. 43a). Xu was instead directed to Dr. David Wright. Wright was identified as a "grievance officer" in a February 14, 2001 letter from the College. Wright was actually the University's Assistant Vice President for Research Ethics and Standards. Wright met Xu on March 1, 2001.

On March 20, 2001, Dr. Cassandra Book, an Associate Dean in the College of Education, wrote a letter to Xu that included a "Summary of Deliberations over the issue of Authorship between JiQiang Xu and Ken Frank," and which concluded that no resolution was reached.

Wright informed Xu that he could request a College-level grievance hearing. On April 29, 2001, Xu sent to Book a *signed grievance* (Pet. App. 43a-47a). On May 1, 2001, and again on June 5, 2001, Book "rejected" Xu's grievance, refused to submit it to a 'hearing board,' and requested that he meet with the University 'Ombudsman.'

On August 13, 2001, Book sent a letter to Xu stating:

> I have reviewed my correspondence with you over the last five months and find that you have not responded to the opportunity to obtain assistance in clarifying your proposed grievance so that your claim of violation of your rights as a graduate student can be heard by a college panel. **Since you have not responded to my email of June 5, 2001 nor my**

> **letter of July 3, 2001, I will consider this matter closed.** [Emphasis Added; Pet. App. 123a-124a].

On August 28, 2001, Xu told Book that if her decision to close the matter was "decisive," that he would file a grievance directly with the University (Pet. App. 125a). On March 19, 2002, Xu contacted the President of the University, Mr. M. Peter McPherson, by way of letter, and expressed his frustration at the refusal of Book and the College to convene a hearing (Pet. App. 127a). President McPherson signed for the letter on March 21, 2002 (Pet. App. 138a).

Xu received no response to said letter, or a subsequent letter to the President. Then, on August 15, 2002, Book, as the Associate Dean of the College of Education, wrote Xu and implied that she had authority to speak for the University President, saying:

> President McPherson and Dr. Simon concur with my letter to you dated August 13, 2001 in which I indicated that the University considers the matter closed (Pet. App. 140a).

On October 29, 2002, the University sent Xu a letter telling him that he had "full and open access to Michigan State University's mechanisms for resolving disputes of this nature. I encourage you to fully engage them" (Pet. App. 142a). On January 7, 2003, Xu again set out his grievance in a formal writing to the University. (Pet. App. 144a).

On February 17, 2003, Wright wrote Xu and informed him that, retroactive to August 13, 2001, "the University considered the matter closed." Wright told Xu that he had "waived any right" to review his concerns "by failing to

participate in the College level hearing offered to you" (Pet. App. 152a).

In September 2003, Book informed Xu that his doctoral degree would be awarded "upon [his] signature," but since he was "no longer a student at MSU," she had "no more information . . . to share with [Xu]" (Pet. App. 58a).

On December 7, 2004, Xu filed this lawsuit claiming that the Defendants had violated his constitutional rights. In addition to the University and its College of Education, Xu sued Frank, Becker, Wright, and Book.

B. The District Court

Xu argued in his lawsuit that the University infringed upon his right to free speech under the First Amendment and violated his rights to due process and equal protection under the Fourteenth Amendment. Defendants filed a motion to dismiss, which the district court converted into a motion for summary judgment pursuant to Fed. R. Civ. P. 56. The district court ruled that the three-year statute of limitations began to run no later than the August 13, 2001, with the letter sent to Xu from Book (Pet. App. 15a). Xu filed his civil complaint in federal court during December 2004. As such, the district court found that it was filed four months after the expiration of the limitations period. All of the federal claims were dismissed and the district court exercised its discretion, under 28 U.S.C. § 1367(c)(3), to dismiss the state law claims without prejudice.

C. The Court of Appeals Decision

Xu filed a timely appeal, challenging only the dismissal of the Fourteenth Amendment claims on statute of limitations

grounds. Xu argued that: (1) Book's August 13, 2001, letter was not a final decision under the University's policy; (2) that Book had no authority to act for University or its President or Provost; and (3) that Michigan's tolling statute tolled the limitation's period because information was concealed by the University.

The Sixth Circuit found that Xu's complaint appeared to raise three claims under the Fourteenth Amendment: (1) that Frank took credit for some of his work, thereby depriving him of his intellectual property; (2) that the Defendants collectively failed to award him his doctoral degree, for which he met all requirements; and (3) that the Defendants collectively have denied him his due process right to a "full and fair hearing" through the university grievance procedure. The Court of Appeals held that the first two claims were barred by the statute of limitations; and that the third claim, even if not so barred, was meritless (Pet. App. 5a).

REASONS FOR GRANTING THE WRIT

This Court should grant this Petition because the Court of Appeals for the Sixth Circuit erred when it found the three-year statute of limitations had run. The Sixth Circuit made this error after extending the *Ricks/Chardon* analysis, typically applied to employment discrimination claims, to this case of theft of intellectual property, by a professor against a student. Even if the *Ricks/Chardon* analysis is applicable, it was misapplied. There is a conflict between the Sixth Circuit's application of *Ricks/ Chardon* below, and the Ninth Circuit's decision in *Abramson v. University of Hawaii*, 594 F.2d 202 (9th Cir. 1979). In any event, the Sixth Circuit erred in finding that the University put Xu on notice August 13, 2001, that his grievance would not proceed. Also, the University's grievance procedure did not conform with due

process. Finally, Mr. Xu has presented newly discovered evidence.

I. THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN FINDING THE THREE- YEAR STATUTE OF LIMITATIONS PERIOD HAD RUN.

A. Introduction

The parties did not dispute that the relevant limitations period is three years. This Court held in *Wilson v. Garcia* that the statute of limitations for § 1983 actions is the same as the limitations period for personal injury claims under state law, 471 U.S. 261, 276 (1985). Under Michigan law, the limitations period for a personal injury claim is three years. Mich. Comp. Laws § 600.5805(10) (2005); see also *Carroll v. Wilkerson*, 782 F.2d 44, 45 (6th Cir. 1986) (finding the relevant limitations period in Michigan to be three years).

The Sixth Circuit in this matter held that, "As Xu filed his complaint on December 7, 2004, his cause of action must have accrued no earlier than December 7, 2001." As such, the Sixth Circuit dismissed all of Xu's claims.

Federal law is used to determine "when the statute of limitations begins to run, that is, when the cause of action accrues," *Dixon v. Anderson*, 928 F.2d 212, 215 (6th Cir. 1991). The limitation period is triggered "when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Id.* (quoting *Servier v. Turner*, 742 F.2d 262, 273 (6th Cir. 1984)). State law determines whether the statute is tolled. *Servier v Turner*, 742 F.3d 262, 272 (6th Cir 1984).

For cases arising under § 1983, the Sixth Circuit has looked to "what event should have alerted the typical lay

person to protect his or her rights." *Id.* (citing *Conlin v. Blanchard*, 890 F.2d 811, 815 (6th Cir. 1989)).

B. The Sixth Circuit Extended the *Ricks/Chardon* Analysis, Typically Applied to Employment Discrimination Claims, to a Theft of Intellectual Property Case by a Professor Against a Student. Was *Ricks/Chardon* Applicable and, if so, Was it Properly Applied? Is There a Conflict Between the Sixth Circuit's Application of *Ricks/Chardon*, and the Ninth Circuit's Decision in *Abramson v. University of Hawaii*, 594 F.2d 202 (9th Cir. 1979)?

A long line of cases, including two cases from this Court, *Delaware State College v Ricks*, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980) and *Chardon v. Fernandez*, 454 U.S. 6, 102 S.Ct. 28, 70 L.Ed.2d 6 (1981), hold that a plaintiff's cause of action in an employment discrimination case accrues when he receives notice of the termination, not when his employment actually ceases.

Federal and State courts, in the context of employment discrimination claims, have repeatedly applied the so-called *Ricks/Chardon* analysis. For examples, *Rivera-Muriente v. Anglo-Alicea,* 959 F.2d 349, 353 (1st Cir. 1992), *Flaherty v. Metromail Corp.*, 235 F.3d 133, 136 (2nd Cir. 2000), *Mull v. Arco Durethene Plastics, Inc.*, 784 F.2d 284, 288 (7th Cir. 1986), *Daniels v. Fesco Div. of Cities Serv. Co.*, 733 F.2d 622, 623 (9th Cir. 1984). This is true of the Sixth Circuit as well, *Wade v Knoxville Utils. Bd.*, 259 F.3d 452, 460 (6th Cir. 2001).

Petitioner has found no case applying the *Ricks/Chardon* analysis outside the employment discrimination context. But if it is to be applied here, as in *Ricks*, the defendant

University speaks through its President, Provost, or Board, and not through an associate dean of a college; and the logical analog of the 'discriminatory act' under *Ricks*, is the termination of Xu's grievance at the University level, not the ambiguous decision of a college-level associate dean.

In the case at bar, the Sixth Circuit extended the *Ricks/Chardon* analysis to a complaint alleging the theft of intellectual property by a professor (Frank) against a student (Xu). This case merits this Court's attention, because it is not clear that this Court intended the *Ricks/Chardon* analysis to apply to facts existing in the present case. But even if the analysis is applicable, its actual application was flawed.

In *Ricks,* the plaintiff professor was denied tenure. He then filed an internal grievance challenging that denial. It was Delaware State's policy to offer one-year terminal contracts to faculty who were denied tenure. The plaintiff in *Ricks* did not file his EEOC charge until the end of that one-year term. This Court held that Rick's filing with the EEOC was beyond Title VII's limitations period, and that there was no showing of a continuing violation to cure the untimeliness. *Id.* at 257-58.

Although *Ricks* involved an employment decision – a denial of tenure – the Sixth Circuit held that its reasoning is applicable to the case sub judice. Like the adverse decision in *Ricks*, Xu's injuries were held to not be "tentative," rather "...they had already occurred and the administrative hearing was only one possible avenue to remedy them." *Id.*, at 260-61. According to the Sixth Circuit "...the existence of the grievance procedure did not change the fact that Xu became aware of the injuries which are the basis of his action and the need to protect his rights prior to December 7, 2001."

Petitioner Xu would challenge the reasoning of the Sixth Circuit. *Ricks* is not analogous to the facts of his case. A university's denial of tenure – an employment decision made by the Board of Trustees of that university – is not equivalent to the theft of intellectual property, in the context of a multi-level university grievance process. Xu's dissertation professor, Dr. Frank, was an *employee* of the university. Unlike in *Ricks*, the university was responsible for Frank under the doctrine of *respondeat superior*.

Moreover, unlike in *Ricks,* where the University *itself*, through its Board of Trustees, committed the alleged civil rights violation; here the University Defendant took no action until less than three years prior to the filing of Xu's complaint. According to the university code, provided as an exhibit herein by Petitioner, Petitioner had a right to seek review of his complaints at the University level.

Further, unlike the plaintiff in *Rick*'s, Xu's injuries *were* "tentative." Until the University itself made a final decision, as the supervisor of Frank, Xu's claims against the University were not accrued under Michigan law. *Rick*'s involved the denial of tenure by a Board of Trustees – simply stated, the university itself made a decision. Xu's claim involved a theft of intellectual property – and the University said nothing until well into the three years prior to the filing of Xu's complaint.

Thus, the issue should have been framed in terms of 'when did the *University* definitively put Xu on notice that they finished their review of this matter.' Here, Mr. Xu turns to the finding the Sixth Circuit made under Xu's third claim: that in the case *sub judice*, the university grievance procedure *likely* concluded no later than Book's August 13, 2001 letter, but *definitively* it could only be held to have concluded on February 17, 2003. The Sixth Circuit below found:

> "[Book's 8/13/01 letter] should have alerted Xu to the fact that he was already tardy in the protection of his rights and that any further action should be immediately undertaken. **But because the date of conclusion is not entirely clear**, we assume arguendo that it was not until February 17, 2003, when Wright, a University Assistant Vice President, notified Xu that the University considered the matter closed. Under this assumption, Xu's third claim was brought within the three-year limitations period."[Emphasis added].

Moreover, the *Ricks/Chardon* analysis did not require the outcome in this case. There was more than sufficient evidence in this case to create a reasonable issue of fact, such that dismissing Xu's complaint was a miscarriage of justice. If *Ricks/Chardon* is applicable to non-employment discrimination cases, consider *v. The University of Nevada-Reno*, 301 F. Supp. 2d 1247, 1250 (D. Nev., 2004).

Like the other *Ricks/ Chardon* cases found by Petitioner, *Metts* involved a claim of employment discrimination. But like Xu's case, Mr. Metts pursued his grievance up the chain of authority within the university, requesting reconsideration all along. Moreover, in *Metts* the university President was deemed the final decision maker with regard to unsuccessful applicants for promotion who seek reconsideration.

As such, the court in *Metts* held that it was not until the university President made his decision, that Metts' claim accrued. *Id.*, 1250. Similarly, in Mr. Xu's case, a University level appeal was the final decision-making level for people in the position of Xu; and his claim did not accrue until *that* decision was made.

The *Metts* decision was a reasonable application of *Abramson v. University of Hawaii,* where the Ninth Circuit considered whether a failure to reconsider an employment decision can constitute an act of discrimination separate from the initial employment decision. 594 F.2d 202 (9th Cir. 1979). The Court noted that there were two ways in which a university might be liable for a discriminatory refusal to reconsider the denial of tenure: 1) failure to reconsider could constitute an additional discriminatory act; or 2) failure to reconsider could constitute the final decision to deny tenure. *Id.*, 209 (citing *Weise v. Syracuse University*, 522 F.2d 397 (2d Cir. 1975)).

The Ninth Circuit clarified the second way in which a university might be liable for a refusal to reconsider tenure, adding:

> ...[W]hen requests for reconsideration are an ordinary and generally accepted part of the tenure decision process, a presidential refusal to overturn a department denial of tenure can be considered as The final denial of tenure. *Abramson*, 594 F.2d at 209.

See also *Harris v Ladner*, 127 F.3d 1121, 1125 (D.C. Cir. 1997), denying a motion to dismiss based on the argument that the statute of limitations began when plaintiff was denied tenure, finding that "the reconsideration [process] may have been a continuation of the original application process").

Moreover, the continuing violations doctrine has been applied to employment discrimination cases that fall under the *Ricks/Chardon* rubric. Consider *Sunshine v Long Island University*, 862 F. Supp. 26, 29 (E.D. N.Y. 1994). The application of *Ricks/Chardon* to the case at bar represents an

unwarranted overextension and misapplication of the *Ricks/Chardon* analysis – it was just a means to toss Mr. Xu to the proverbial curb.

If Xu's claim against the University did not accrue until the University refused to take action against Frank, then the claim against the University accrued on February 17, 2003 – and the December 7, 2004 lawsuit filing was timely.

This analysis comports with both logic and with the regulatory structure in place at the University. The *injury* to Xu (Frank's theft of his property and denial of a degree) was not a *final* decision of the University insofar as Xu had the right to appeal to the University for protection of these property rights.

Under the regulations of the University, he had the right to appeal to all three levels of the organization (Department, College, and University) and was entitled to both a formal and informal decision at each level. Xu did what he was supposed to do – he followed his appeal up the chain. Dr. Book, as an Associate Dean of the "College of Education" had no stated or implied authority to make a University level decision. That University level decision was not made until the February 17, 2003 letter from Wright (Pet. App. 48a).

It was not until August 15, 2002, that Book even *claimed* any authority to speak on behalf of the University (Pet. App. 140a). This date also falls well within the statute of limitations. The record does not support the picking of August 13, 2001, as the date Xu should have *somehow* known the University had made a decision. Simply read the text of Book's letter – Book never claims to be representing the University (Pet. App. 123a).

C. The Sixth Circuit Erred in Finding that The University put Xu on Notice August 13, 2001, that his Grievance would not Proceed.

Moreover, the Sixth Circuit adopted the argument made by the defense that Book's correspondence to Xu should have told Xu that the University was done reviewing this matter – that he had exhausted his administrative remedies in this matter.

Under article 5.3.6 of the University's "Graduate Students Rights and Responsibilities (GSRR), "a grievant must submit a written, signed statement that specifies in sufficient particularity to justify proceedings the point(s) forming the basis for the grievance, the person(s) and/or unit(s) against whom/which the grievance is filed, and the redress that is sought" (Pet. App. 100a).

Declaring Xu's April 29, 2001 grievance insufficient, Associate Dean Book *e-mailed* Xu during June 2001 and wrote to him during July 2001, requesting that he "clarify" his grievance (Pet. App. 123a). Xu reasonably took this as a refusal by Book to process his grievance and schedule a formal hearing, because his grievance was clear and did give notice of his allegations. Book, however, refused to process the grievance and, on August 13, 2001, she told Xu that she considered the matter closed. Thus, no hearing board reviewed Xu's grievance.

Xu continued to complain to the University. Dr. Wright took his complaint. It was not until Wright rejected his complaint that Xu would have known with finality that he was injured by the University and would receive no redress within the University.

An appellate Court's review of a district court's grant of summary judgment is to be reviewed de novo. *McWane, Inc. v. Fidelity & Deposit Co. of Md.*, 372 F.3d 798, 802 (6th Cir. 2004). Summary judgment is proper when there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The Sixth Circuit was required to view the evidence and draw all reasonable inferences in favor of Xu, the non-moving party. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The Sixth Circuit concluded that prior to December 2001, Xu became aware that he had suffered the injury that gave rise to his cause of action. But if Michigan law required Xu to exhaust his administrative remedies – internal to the University – then he had no action against the University prior to December 2001. According to the findings made by the Sixth Circuit itself, that action did not accrue until February 2003.

Most of the Sixth Circuit's reasoning turns upon what Xu knew *relative to Dr. Frank*. But under Michigan law, these facts would not control the accrual date of any action against the University. The Sixth Circuit's opinion, at its page six, focuses its attention on: the date Xu learned that Frank had put his own name on Xu's papers (April 1998), the date in 1999 that Xu learned that his degree had not been awarded because Frank had not processed his dissertation (an event that the University itself has not undertaken to this date). The Court then references, again at its page six, the various dates on which Xu complained to the various levels within his *College* (October 1999, 2000, early 2001, and March 2001). The Sixth Circuit opinion notes Dr. Book's letter, of August 13, 2001, informing Xu that it would not grant him a hearing and "consider[ed] this matter closed."

Dr. Book's letter of August 13, 2001, by its terms, closed the matter at the College level but could not close the matter at the University level (Pet. App. 123a). Book's letter of August 13, 2001 followed a department level investigation and conclusion not accepted by Xu. The letter is on stationery entitled "*College* of Education." Dr. Book's title in the letter is "Associate Dean of the *College* of Education." There is no indication, either express or implied, that Book was speaking for the University or its President or Provost (Pet. App. 125a). Xu's letter of March 19, 2002 clearly shows he believed he could have his matter reviewed at a higher level (Pet. App. 127a). In any event, Xu was *denied* even a College level hearing.

Book's letter of August 15, 2002, was the first indication given to Xu, by anyone, that Book had any authority to speak on behalf of the University – or its President or Provost – or that she had authority to close the matter at the University level (Pet. App. 140a). This date falls *within* the three-year period of limitation.

D. State Law Required Xu to Exhaust all Administrative Remedies before Proceeding.

Generally, actions by the executive branch in Michigan are reviewable by a court when the executive branch has completed its consideration of the matter and reached a final decision. The decision is not final if there is a procedure available to the affected party that can be asserted by that party to force the executive branch to make a further consideration of the matter

If Xu had proceeded into Michigan state court upon his receipt of the August 13, 2001, letter from Dr. Book, the state courts of would have held that his claim was barred for

failure to exhaust his administrative remedies through the grievance procedure. The trend in the state of Michigan has been to put *greater* pressure on litigants to exhaust administrative remedies upon sanction of having their cases dismissed.

Womack-Scott v. Department of Corrections, 246 Mich App 70; 630 N.W.2d 650 (2001), appeal denied, 636 N.W.2d 143 (Mich. 2001) relied upon Michigan precedent to hold that exhaustion of remedies was required even though a constitutional issue beyond the jurisdiction of the executive branch, was intermingled with issues properly before the agency.

E. Conclusion

The statue of limitations was not triggered until the University spoke, on February 17, 2003, through Wright, a University Assistant Vice President. Xu was then notified that the University considered the matter closed, and that all of Xu's administrative remedies were exhausted. This date falls well within the three-year limitations period.

II. THE UNIVERSITY'S ADMINISTRATIVE GRIEVANCE PROCEDURE VIOLATED DUE PROCESS.

Xu's third claim involved an allegation that the University's grievance procedure did not conform with due process. Before reaching this issue, the Sixth Circuit held that the existence of a grievance procedure does not postpone the accrual of the limitations period for a separate injury, this was a reference to *Rick*'s. The Sixth Circuit also recognized, however, that a claim that the grievance process *itself* resulted in an injury necessarily cannot accrue until the completion of

that process. See *Kelly v. Burns*, 415 F.3d 558, 561 (6th Cir. 2005).

As noted above, the Sixth Circuit concluded that, in the case *sub judice*, the university grievance procedure likely concluded no later than Book's August 13, 2001, letter, "...which should have alerted Xu to the fact that he was already tardy in the protection of his rights and that any further action should be immediately undertaken." But the Court went on to hold that, "...because the date of conclusion is not entirely clear, we assume arguendo that it was not until February 17, 2003, when Wright, a University Assistant Vice President, notified Xu that the University considered the matter closed. Under this assumption, Xu's third claim was brought within the three-year limitations period."

In this claim, Xu argued that, after his grievance was denied by Book at the College level, he was due one final review at the higher, University level. He thus claims that the University deprived him of his due process rights by not following its own procedures.

The Sixth Circuit held, however, that whether the University followed its own internal procedures was not the proper inquiry. "Violation of a state's formal procedure . . . does not in and of itself implicate constitutional due process concerns." Here the lower Court cited *Purisch v. Tenn. Tech. Univ.*, 76 F.3d 1414, 1423 (6th Cir. 1996) (citing *Levine v. Torvik*, 986 F.2d 1506, 1515 (6th Cir. 1993), overruled in part on other grounds by *Thompson v. Keohane*, 516 U.S. 99, 111 (1995)). "A state cannot be said to have a federal due process obligation to follow all of its procedures; such a system would result in the constitutionalizing of every state rule, and would not be administrable," *Levine*, 986 F.2d at 1515.

Thus, for the Sixth Circuit, the inquiry was not whether the University conformed to its own internal grievance procedures, but rather whether Xu was afforded the due process guaranteed under the Fourteenth Amendment.

Under the Fourteenth Amendment to the United States Constitution, no state may "deprive any person of life, liberty, or property, without due process of law...." It is not disputed that the University in this matter is a creature of the State of Michigan. Nor was it ever disputed that Xu had a property interest in a degree from the University, and his own intellectual property, and that these interests enjoy the protection of due process.

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333; 96 S.Ct. 893, 902; 47 L.Ed. 2d 18 (1976). What process is due is measured by a flexible standard that depends on the practical requirements of the circumstances. *Id.* at 334, 96 S.Ct. at 902; *Goss v. Lopez*, 419 U.S. 565, 577-78; 95 S.Ct. 729, 738; 42 Led2d 725 (1975). That flexible standard was translated by *Goss* to mean that high school students facing the deprivation of a property right by suspension from school must, at a minimum, "be given some kind of notice and afforded some kind of hearing." 419 U.S. at 579, 95 S.Ct. at 738.

The adequacy of the notice and the nature of the hearing vary according to an "appropriate accommodation of the competing interests involved" *Goss v. Lopez*, 419 U.S. at 579: 95 S.Ct. at 739. Under *Mathews*, three factors are important when considering the constitutional adequacy of the procedures afforded in a given situation: First, the private interest that will be affected by the official action; second, the

risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. at 335, 96 S.Ct. at 903 (citation omitted).

In what sense can the process in the case *sub judice* be considered to have satisfied constitutional due process? Here you have an Associate Dean, Dr. Book, who took Xu's grievance, unilaterally declared it insufficient, never submitted it to a hearing board recognized within the University's regulations, and closed the matter. The problem with the process afforded Mr. Xu is simple – he was denied any opportunity to be heard by a hearing panel. Dr. Book unilaterally rejected his grievance, and that is where the matter terminated.

An impartial decision-maker is an essential guarantee of due process, *Withrow v. Larkin*, 421 U.S. 35, 46-47; 95 S.Ct. 1456, 1463-1465; 43 L.Ed.2d 712 (1975). "[B]asic fairness and integrity of the fact-finding process are the guiding stars," *Boykins v. Fairfield Board of Educatio*n, 492 F.2d 1234 (Cir. 5 1970). In what sense can Professor Book and her colleague, Professor Frank, be deemed impartial decision makers? The latter used Mr. Xu's language inefficiencies as an excuse to steal his intellectual property, and the former used Mr. Xu's language inefficiencies as an excuse to deny him a hearing.

III. NEWLY DISCOVERED EVIDENCE

The defense argued successfully that Xu's grievance was closed at the University level on August 13, 2001. Newly discovered evidence shows that this claim is not true. The

Defendants were making false statements to the United States District Court and the United States Court of Appeals for the Sixth Circuit.

The recently discovered evidence is a letter to then President M. Peter McPherson and then Provost Lou Anna Simon by Dr. David Wright dated June 21, 2002 (Pet. App. 158a). In this letter, Wright states the following:

> This dispute was handled under the Graduate Student Rights and Responsibilities (GSRR) Procedures in the college, and I believe it was handled properly.
>
> ***
>
> On 29 August 2001 Mr. Xu responded to [Associate] Dean Book that he would pursue the matter at higher levels of the University, which he has now done in a series of letters to Peter [McPherson].

Wright admits that this dispute was once at the *College Level* and then reached the "higher level of the *University,*" as he was responding to an inquiry made by the President and/or Provost. His letter is dated June 21, 2002. It was in response to Petitioner's letters of March 19, 2002 and May 11, 2002.

In this letter, (Pet. App. 158a), Wright made a suggestion to the President and Provost on how to respond to Petitioner at the University level. As such, by June 21, 2002, a University level response to the Petitioner had not been made. As an attachment to (Pet. App. 161a) there is an email to Holly Byrnes from Associate Dean Book dated May 16, 2002, in which Book cited correspondence in this matter, to the University President, dated March 22, 2002.

From all his student files Petitioner received from MSU so far, Petitioner did not receive the letters dated March 22, 2002 and May 16, 2002, until after his appeal terminated.

Book sent Petitioner a letter dated August 15, 2002 (Pet. App. 140a), claiming that she spoke for President McPherson and Provost Simon. Whereas in her August 13, 2001, letter Book stated she would consider the matter closed on behalf of the *College* of Education (Pet. App. 123a). In her August 15, 2002, letter Book said that she had, one year earlier, indicated that the *University* would consider the matter closed (Pet. App. 140a). According to the newly discovered evidence, the University did not have a chance to consider the "matter closed" as early as on August 13, 2001.

CONCLUSION

For the foregoing reasons, the United States Supreme Court should reverse the summary judgment(s) below, and return this case to the district court for trial.

Respectfully submitted this 19th day of January 2007.

JiQiang Xu
Petitioner, Pro Se

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 05-1372

[Filed August 24, 2006]

JI QIANG XU,	)
Plaintiff-Appellant,	)
	)
v.	)
	)
MICHIGAN STATE UNIVERSITY;	)
MICHIGAN STATE UNIVERSITY	)
COLLEGE OF EDUCATION;	)
DR. KENNETH A FRANK;	)
DR. BETSY J. BECKER;	)
DR. DAVID E. WRIGHT;	)
DR. CASSANDRA BOOK,	)
Defendants-Appellees.	)
	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Before: COLE, GIBBONS, and ROGERS, Circuit Judges.

OPINION

JULIA SMITH GIBBONS, Circuit Judge. Ji Qiang Xu appeals a district court order dismissing on statute of limitations grounds three claims brought pursuant to 42 U.S.C. § 1983. Xu argues on appeal that the district court erred in finding that the injuries giving rise to his cause of action occurred more than three years prior to the filing of the instant lawsuit. We affirm the grant of summary judgment as to the first two claims on statute of limitations grounds. Although the third claim was possibly brought within the applicable limitations period, summary judgment is appropriate as there is no genuine issue for trial.

I.

Xu was a doctoral student in the Department of Counseling, Educational Psychology and Special Education ("Department"), which is part of the College of Education ("College") at Michigan State University ("University"). In the spring of 1998, Xu learned that his academic adviser, Dr. Kenneth Frank, had listed himself as a second author on one of Xu's research papers. Though his rationales for doing so are not clear, it appears that Frank believed he deserved credit for assisting Xu, who has some difficulty with the English language, in making his papers more "publishable." In December 1998, Xu submitted his final dissertation to complete his graduation requirements. Six months later, Xu learned that his degree had not been awarded because Frank had not processed his dissertation. In October 1999, Xu filed a complaint with the Department, claiming that Frank had taken credit for his work and that he had completed the requirements for his program but had not been granted a degree. The Department asked Dr. Betsy Becker to investigate. Becker proposed at least four different solutions

in 2000 and early 2001, all of which were rejected by Xu. Becker summarized her attempts to resolve the matter in a written report in January 2001. Xu objected to this report, and in March 2001, he filed a grievance against Becker. Dr. David Wright, the University's Assistant Vice President for Research Ethics and Standards, met with Xu in March 2001. Xu claims that Wright "proved to be more of an obstruction," and no solution resulted from the meeting. Xu next complained to Dr. Cassandra Book, the Associate Dean of the College of Education, and stated his intent to take advantage of the University's formal grievance procedures. However, he failed to follow up on this request and did not respond to later correspondence sent by Book. On August 13, 2001, Book sent a letter to Xu stating:

> I have reviewed my correspondence with you over the last five months and find that you have not responded to the opportunity to obtain assistance in clarifying your proposed grievance so that your claim of violation of your rights as a graduate student can be heard by a college panel. Since you have not responded to my email of June 5, 2001 nor my letter of July 3, 2001, I will consider this matter closed.

Six months later, Xu renewed his complaint, sending letters to the President of the University and other University Executive Officers. On August 15, 2002, Book again wrote Xu to reaffirm the University's position: "President McPherson and Dr. Simon concur with my letter to you dated August 13, 2001 in which I indicated that the University considers the matter closed." Again on February 17, 2003, Wright wrote Xu and informed him that as of August 13, 2001, "the University considered the matter closed." In September 2003, Book informed Xu that his diploma would be awarded "upon [his] signature" but since he was "no

longer a student at MSU," she had "no more information . . . to share with him."

Xu took no further action until December 7, 2004, when he filed this lawsuit claiming that the defendants had violated his constitutional rights. In addition to the University and its College of Education, Xu sued Frank, Becker, Wright, and Book. Specifically, Xu argued that the University infringed his right to free speech under the First Amendment and violated his rights to due process and equal protection under the Fourteenth Amendment. Defendants filed a motion to dismiss, which the court converted into a motion for summary judgment pursuant to Fed. R. Civ. P. 56. The district court granted the motion, dismissing the First Amendment claims on the merits and the Fourteenth Amendment claims as untimely. The court ruled that the three-year statute of limitations on his claim began to run no later than August 13, 2001, the date on which he received the letter from Book. Xu did not file his claim until December 2004, four months after the expiration of the limitations period. As all of the federal claims were dismissed, the court exercised its discretion under 28 U.S.C. § 1367(c)(3) and dismissed the state law claims without prejudice. Xu filed a timely appeal, challenging only the dismissal of the Fourteenth Amendment claims on statute of limitations grounds.

II.

A district court's grant of summary judgment is reviewed *de novo. McWane, Inc. v. Fidelity & Deposit Co. of Md.*, 372 F.3d 798, 802 (6th Cir. 2004). Summary judgment is proper when there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). We view the evidence, and draw all reasonable inferences, in favor of Xu, the non-moving

party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

Xu's complaint, while somewhat ambiguous, appears to raise three claims under the Fourteenth Amendment: (1) that Frank took credit for some of his work, thereby depriving him of his intellectual property; (2) that the defendants have failed to award him his degree, for which he has met all of the requirements; and (3) that the defendants have denied him his due process right to a "full and fair hearing" through the university grievance procedure. The first two claims are barred by the statute of limitations; the third claim, even if not barred by the limitations period, is meritless.[1]

A.

The parties do not dispute that the relevant limitations period is three years. The Supreme Court held in *Wilson v. Garcia* that the statute of limitations for § 1983 actions is the same as the limitations period for personal injury claims under state law. 471 U.S. 261, 276, 105 S. Ct. 1938, 85 L. Ed. 2d 254 (1985). Under Michigan law, the limitations period is three years. Mich. Comp. Laws § 600.5805(10)(2005); *see also Carroll v. Wilkerson*, 782 F.2d 44, 45 (6th Cir. 1986) (finding the relevant limitations period in Michigan to be three years). As Xu filed his complaint on December 7, 2004, his

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[1] The merits of Xu's second claim are also suspect, as Xu's failure to have his degree awarded appears to be of his own doing. The record reflects numerous messages from University officials to Xu that his degree will be awarded if he signs the proper paperwork. Counsel for the University reaffirmed this position at oral argument.

cause of action must have accrued no earlier than December 7, 2001.

Federal law is used to determine "when the statute of limitations begins to run, that is, when the cause of action accrues." *Dixon v. Anderson,* 928 F.2d 212, 215 (6th Cir. 1991). The limitation period is triggered "when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Id.* (quoting *Sevier v. Turner,* 742 F.2d 262, 273 (6th Cir. 1984)). For cases arising under § 1983, this court has looked to "what event should have alerted the typical lay person to protect his or her rights." *Id.* (citing *Conlin v. Blanchard,* 890 F.2d 811, 815 (6th Cir. 1989)). The key date for the accrual of the limitations period is the injury, not the completion of any grievance process. The Supreme Court has stated that "[t]he grievance procedure, by its nature, is a *remedy* for a prior decision, not an opportunity to *influence* that decision before it is made . . . ." *Delaware State College v. Ricks,* 449 U.S. 250, 261, 101 S. Ct. 498, 66 L. Ed. 2d 431 (emphasis in original). Although *Ricks* involved an employment decision – a denial of tenure – its reasoning is applicable to the case at hand. Like the adverse decision in *Ricks,* Xu's injuries were not "tentative" – they had already occurred and the administrative hearing was only one possible avenue to remedy them. *Id.* at 260-61. The existence of the grievance procedure did not change the fact that Xu became aware of the injuries which are the basis of his action and the need to protect his rights prior to December 7, 2001.

Viewing the facts in his favor, Xu became aware that he had suffered an injury that could give rise to a cause of action at the hands of each of the defendants prior to December 2001. In his complaint, Xu acknowledges that he learned as early as April 1998 that Frank had put his own name on one

of Xu's papers. Xu also learned in 1999 that his degree had not been awarded because Frank had not processed his dissertation. He raised these two concerns in his complaint with the Department that was filed in October 1999. Xu's injuries at the hands of Becker occurred in 2000 and early 2001, as he found her to be obstructing his claim against Frank and rejected all of her proposed solutions. Xu filed a grievance against Becker in March 2001. Xu also stated in his complaint that Wright injured him in March 2001, by being "an obstruction" who was completely unhelpful and was not interested in resolving Xu's problem. Finally, Book injured Xu on August 13, 2001, when she informed him that the College would not grant him a hearing and that she "consider[ed] this matter closed." By the date of each of these events, if not earlier, Xu was alerted of the need to protect his rights regarding the deprivation of his intellectual property and the withholding of his degree. All of the events occurred prior to December 7, 2001. As the availability of a grievance remedy does not change the calculus, *see Ricks*, 449 U.S. at 261, the claims were brought outside of the three-year limitations period, and the ruling of the district court granting summary judgment for counts 1 and 2 on statute of limitations grounds is affirmed.[2]

B.

Xu's third claim is that the University's grievance procedure did not conform with due process. As noted above,

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[2] Xu also attempts to argue that the statute of limitations should be tolled under Michigan's fraudulent concealment statute, Mich. Comp. Laws § 600.5855 (2005). As he did not make this argument to the district court, it is waived. *See Foster v. Barilow*, 6 F.3d 405, 407-08 (6th Cir. 1993).

the existence of a grievance procedure does not postpone the accrual of the limitations period for a separate injury. A claim that the grievance process itself resulted in an injury, however, necessarily cannot accrue until the completion of that process. *See Kelly v. Burks,* 415 F.3d 558, 561 (6th Cir. 2005). The university grievance procedure likely concluded no later than Book's August 13, 2001, letter, which should have alerted Xu to the fact that he was already tardy in the protection of his rights and that any further action should be immediately undertaken. But because the date of conclusion is not entirely clear, we assume *arguendo* that it was not until February 17, 2003, when Wright, a University Vice President, notified Xu that the University considered the matter closed. Under this assumption, Xu's third claim was brought within the three-year limitations period.

In this claim, Xu argues that after his grievance was denied by Book at the college level, he was due one final review at the higher, "university" level. He thus claims that the University deprived him of his due process rights by not following its own procedures. Whether Michigan State followed its own internal procedures, however, is not the proper inquiry. "Violation of a state's formal procedure . . . does not in and of itself implicate constitutional due process concerns." *Purisch v. Tenn. Tech. Univ.,* 76 F.3d 1414, 1423 (6th Cir. 1996) (citing *Levine v. Torvik,* 986 F.2d 1506, 1515 (6th Cir. 1993), *overruled in part on other grounds by Thompson v. Keohane,* 516 U.S. 99, 111, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995)). "A state cannot be said to have a federal due process obligation to follow all of its procedures; such a system would result in the constitutionalizing of every state rule, and would not be administrable." *Levine,* 986 F.2d at 1515. Thus, the inquiry is not whether the University conformed to its own internal grievance procedures, but

rather if Xu was afforded the due process guaranteed under the Fourteenth Amendment.

Viewing the facts in the light most favorable to Xu, we find that the University's investigation into the matter complied with the requirements of due process. After learning of Xu's complaints, the Department conducted a thorough investigation of the claim. On at least three occasions, Becker shared her findings and proposed resolutions with Xu, allowed him to respond and followed-up with modified proposals. The fact that Xu found these solutions unsatisfactory does not alone give rise to a due process concern. The Department finally summarized its conclusions in a written report in January 2001. Xu responded to this report in writing and was given a chance to meet with Wright and Book. After these meetings, Xu stopped corresponding with Book and the matter was closed. This court has held that due process does not always require a "full evidentiary hearing" and that the formality and exact procedures required can vary depending on the nature of the interests asserted. *Purisch,* 76 F.3d at 1423-24 (internal citations omitted). Rather, due process requires "'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.'" *Id.* at 1423 (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)). Xu cannot claim that he was denied such an opportunity. The University, through Book, offered to arrange for Xu's grievance to be heard by a college panel in the spring and early summer of 2001, and Xu failed to respond to these overtures. Only after five months of hearing nothing from Xu did Book inform him that the matter would be closed. This decision, and the University's refusal to reopen the matter, do not violate due process. *Cf. Wilson v. Bd. of Trustees of Comm. Coll. of Balt. Cty.*, 333 F. Supp. 2d 392, 398 (D. Md. 2004) (finding that a lack of a hearing does

not violate due process if one is not requested). Given the circumstances and the nature of the claim, the University afforded Xu all of the process he was due.

As there is no genuine issue of material fact for trial, *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), we affirm the grant of summary judgment on the third count.

III.

The judgment of the district court is affirmed for the reasons stated above.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed February 23, 2005]

JIQIANG XU,
Plaintiff,

v.

MICHIGAN STATE UNIVERSITY,
MICHIGAN STATE UNIVERSITY
COLLEGE OF EDUCATION,
DR. KENNETH A. FRANK,
DR. BETSY J. BECKER,
DR. DAVID E. WRIGHT, and
DR. CASSANDRA BOOK,
Defendants.

Hon. Richard Alan Enslen

OPINION

Plaintiff JiQiang Xu, through counsel, has sued Michigan State University, including its College of Education, and four professors for violations of 42 U.S.C. § 1983 and state law. The claims relate to Defendants' failure to award Plaintiff his doctorate of philosophy degree in the Department of Education. It also relates to Defendant Kenneth A. Frank's alleged wrongful acts in taking credit for Plaintiff's scholarly work in connection with his dissertation (and the failure of other Defendants to redress the alleged wrongful acts). Defendants, through counsel, have moved for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6).

Because the response to the motion raises matters outside the pleadings, the Court will interpret this motion as one for summary judgment under Federal Rule of Civil Procedure 56. *See* Fed. R. Civ. P. 12(b). So interpreted, the applicable standard is whether the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The initial burden is on the movant to specify the basis upon which summary judgment should be granted and to identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The burden then shifts to the non-movant to come forward with specific facts, supported by the evidence in the record, upon which a reasonable jury could find there to be a genuine fact issue for trial. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

In this case, Plaintiff alleges five constitutional claims under 42 U.S.C. § 1983 in the first five counts of the

Complaint: (1) violation of the Fourteenth Amendment's Due Process Clause by depriving Plaintiff of intellectual property (his dissertation) without due process of law; (2) violation of the Equal Protection Clause of the Fourteenth Amendment by denying Plaintiff his doctorate degree; (3) violation of Plaintiff's equal protection rights by depriving him of his intellectual property; (4) violation of Plaintiff's First Amendment right to free speech by publication of a letter to academics;[1] and (5) violation of Plaintiff's First Amendment fight to free speech by the publication of a false list to academics. The remainder of the counts are asserted under state law.

As demonstrated by the papers filed, the controversies reached a crescendo between 1998 and 2001. In that time period, Plaintiff made clear to the University his allegations and sought relief from the University. The University, for its part, afforded an investigation and hearing process. The result of this hearing process (in which no hearing took place because the University deemed Plaintiff to have waived his right to hearing) is Cassandra Book's letter of August 13, 2001. Said letter informed Plaintiff: "Since you have not responded . . . , I will consider this matter closed." (Pl.'s Resp., Ex. B; Compl., ¶ 44.) Not dissuaded, Plaintiff continued to seek relief from various offices of the University. The results of these attempts, however, were two similar letters from the University. There is Cassandra Book's letter of August 15, 2002 which stated: "President McPherson and Dr. Simon concur with my letter to you dated August 13, 2001 in which I indicated that the University considered the

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[1] Plaintiff's Complaint labels this claim "censorship"–though it appears from the facts pled that he is making a First Amendment retaliation claim.

matter closed." (Pl.'s Resp., Ex. G.) There is also David E. Wright's letter of February 17, 2003 which stated: "In response to your later attempts to seek review of your concerns, Dr. Cassandra Book advised you in letters dated 13 August 2001 and 15 August 2002 that the requests were untimely, and that the University considered the matter closed." (Pl.'s Resp., Ex. J.)

Under federal law, section 1983 claims are subject to the same limitation period as claims for personal injury, which in turn depends on a state's limitation period for personal injury. *See Wilson v. Garcia,* 471 U.S. 261, 276 (1985). Michigan's limitation period is three years. *See* Mich. Comp. Laws § 600.5805(10); *Carroll v. Wilkerson,* 782 F.2d 44, 45 (6th Cir. 1986). The limitation period is triggered "when the plaintiff knows or has reason to know of the injury which is the basis of his action." *Sevier v. Turner,* 742 F.2d 262, 272 (6th Cir. 1984). In the instant case, Plaintiff definitively had reason to know of the injuries as of August 13,2001–when he was told that the University considered his pleas for relief closed.[2] Lest there was any confusion, this advice was twice confirmed for him. As such, the limitation period began not later than August 13, 2001 and had run before the filing of this Complaint in December 2004.[3] This defense, thus, clearly

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[2] Whether Defendants were correct in saying so is relevant to liability, but is irrelevant in this case to the issue of whether Plaintiff had notice that his claims had arisen. Thus, Plaintiff's contentions that he was entitled to more process are not inconsistent with the running of the limitation period.

[3] Neither the Complaint nor the record filings provide any basis for equitable tolling or other exception to the running of the limitation period. *See Andrews v. Orr,* 851 F.2d 146, 151 (6th Cir. 1988)

precludes suit as to counts 1-3. It may also preclude suit as to counts 4 and 5–though it is impossible to tell from the Complaint because Plaintiff has failed to allege the date or dates that the "retaliatory" communications were sent.

Nevertheless, even assuming that the communications were sent within the last three years, Defendants are still entitled to summary judgment as to counts 3 and 4. As a basic principle, neither the allegations nor the proof filed are sufficient to support any First Amendment retaliation claim. In order to make such a claim, Plaintiff must show that Defendants took action in retaliation for the expression of speech as to a matter of public concern. In the instant case, there is no allegation or proof as to when the communications occurred and to which specific persons they were directed. Given this, a reasonable jury could not reasonably conclude that such ill-defined speech was retaliatory. Further, Plaintiff's assumption that the speech is protected is not supported by the record. The record only supports an inference that the speech was related to private grievances of Plaintiff as opposed to maters of public concern. *See Valot v. Southeast Local Sch. Dist. Bd. of Educ.*, 107 F.3d 1220, 1226 (6th Cir. 1997); *Nicklas v. Eagle*, 2002 WL 2026692, **2 (6th Cir. Aug. 22, 2002). Accordingly, Defendants are entitled to summary judgment as to all of Plaintiff's federal claims.

The remainder of the counts are asserted under state law. As to those claims, the Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Nevertheless, since all federal claims will be dismissed, section 1367(c)(3) authorizes this Court to decline to exercise jurisdiction over the state law claims. The Court believes that the interests of justice would be best served by the state courts' resolution of the remaining state law issues and therefore will dismiss those claims

without prejudice in accordance with 28 U.S.C. § 1367(c)(3). *See Carnegie-Mellon Univ. v. Cohill,* 484 U.S. 343, 357 (1988); *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754 (6th Cir. 2000).

CONCLUSION

In accordance with this Opinion, summary judgment will be granted as to all federal law claims and all state law claims will be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

DATED in Kalamazoo, MI:
February 23, 2005

/s/Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed February 23, 2005]

JIQIANG XU,
Plaintiff,

v.

MICHIGAN STATE UNIVERSITY,
MICHIGAN STATE UNIVERSITY
COLLEGE OF EDUCATION,
DR. KENNETH A. FRANK,
DR. BETSY J. BECKER,
DR. DAVID E. WRIGHT, and
DR. CASSANDRA BOOK,
Defendants.

Hon. Richard Alan Enslen

JUDGMENT

In accordance with the Opinion of this date;

IT IS HEREBY ORDERED that Defendants Michigan State University *et al.*'s Motion to Dismiss (Dkt. No. 7) is **GRANTED**, all federal law claims raised are **DISMISSED** with prejudice, and all state law claims are **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1367(c)(3).

DATED in Kalamazoo, MI:
February 23, 2005

/s/Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed December 7, 2004]

JiQiang Xu,
Plaintiff,

v.

Michigan State University,
Michigan State University College of
Education, Dr. Kenneth A. Frank,
Dr. Betsy J. Becker,
Dr. David E. Wright,
Dr. Cassandra Book,
Defendants.

Richard Alan Enslen
U.S. District Judge

COMPLAINT

Now comes the above named plaintiff, by his attorney James D. Lovewell and for his complaint says:

(1) That this action arises under the United States Constitution, particularly under the provisions of the Fourth and Fourteenth Amendments to the constitution of the United States and under federal law, particularly, the Civil Rights Act, Title 42 of the US Code no 1983 (42 USC 1983).

(2) This court has jurisdiction of this cause under provisions of Title 28 of the United States Code No. 1331 and 1343.

(3) Plaintiff, a resident of the County of Ingham, State of Michigan, brings this action in plaintiff's individual capacity.

(4) Defendants Michigan State University (MSU) is an institution of higher learning, established under the laws of the State of Michigan, with its principal campus in East Lansing, Michigan.

(5) Defendant MSU College of Education is a college of Michigan State University conducting its business on the main campus of Michigan State University.

(6) Defendant Dr. Kenneth A. Frank is an Associate Professor in the Department of Counseling, Education Psychology and Special Education (CEPSE), in the program of Measurement and Quantitative Methods (MQM), College of Education, Michigan State University.

(7) Defendant Dr. Betsy J. Becker is a Professor in the Department of CEPSE in program of MQM, and is the chairperson of the Graduate Program of MQM, College of Education, Michigan State University.

(8) Defendant Dr. David E. Wright is a Professor acting as "University Intellectual Integrity Officer" and "Assistant Vice President for Research Ethics and Standards" at Michigan State University.

(9) Defendant Dr. Cassandra Book is a Professor acting as "Associate Dean" of College of Education at Michigan State University.

INTRODUCTION

(10) In this action Plaintiff seeks declaratory and injunctive relief against Michigan State University and the Michigan State University College of Education, requiring them to clear all confusion regarding his qualification of his Ph.D. degree and grant to plaintiff a Doctorate Degree and publish and/or give him exclusive authorship of research work in "Spatial Autoregression Models (SAM)" including his dissertation entitled "Spatial Autoregression Models, Its Solutions of Parameter Estimation and Application".

(11) That defendants Michigan State University pay compensatory damages to plaintiff including deprivation of plaintiff's property without due process of law.

FACTUAL BASIS

(12) On March 29, 1994 Plaintiff's application for admission to the doctoral program in Measurement and

Quantitative Measurement at Michigan State University was approved by the College of Education, Department of Counseling Educational Psychology and Special Education. The assigned advisor to him was Dr. Kenneth A. Frank starting fall semester of 1994. Dr. Frank became his academic advisor since May of 1995.

(13) As a requirement of the program, in June of 1996, plaintiff submitted to his advisor, Dr Frank, his "apprenticeship paper" entitled "Solution Methods for Spatial Linear Models". On September 6, 1996 plaintiff successfully defended his "apprenticeship paper" before the advisory committee.

(14) In mid September of 1996 defendant, Dr. Frank, advised plaintiff not to publish the "apprenticeship paper". That he, Dr. Frank, would help correct errors in plaintiff's use of the English language and put the paper in better context. He was not going to change the central ideas in the thesis.

(15) In late November of 1996 defendant, Dr. Frank, told plaintiff that he wanted to add on some of his "new stuff' to plaintiff's "apprenticeship paper" so to "share an equal authorship" with plaintiff for publication. Dr. Frank wanted to be the first author.

(16) In January and March of 1997, Dr. Frank gave plaintiff a total of two pieces of his drafts with three points of his "new stuff." All three points of his "new stuff' were rejected by plaintiff for "academic errors." Later in his email to plaintiff dated September 16, 1999, Dr. Frank told plaintiff that his drafts were solely to "write-up the ideas from your apprenticeship/dissertation into a publishable form."

(17) On December 19, 1997 plaintiff obtained approval from Dr. Frank, submitted his single-authored SAM research paper with a focus in application to be presented at the "International Sociology Association (ISA) XIV World Congress" in Montreal, Canada. That paper was accepted on December 27, 1997.

(18) On December 29, 1997 plaintiff obtained approval from Dr. Frank, submitted his second single-authored SAM research paper with a focus in theory to be presented at the "Sunbelt XVIII and Fifth European International Social Network conference" in Barcelona, Spain. That paper was accepted on January 22, 1998.

After plaintiff's submission, Dr. Frank re-wrote plaintiff's idea with Dr. Frank's name on, sent to the Barcelona conference organizers. His name appeared to be the second author to plaintiff's paper at the conference.

(19) When plaintiff discovered Dr. Frank's deception he suffered stress related pain. On April 22, 1998, he was in the emergency room at St. Sparrow Hospital for few hours because of the heart problem like symptoms.

(20) On October 2, 1998, plaintiff was required to stay over night in the emergency room / outpatient room at St. Sparrow Hospital for about 22 hours because of the similar stress, and heart related pain.

(21) On December 18, 1998, plaintiff had timely met all the criteria for the degree. He received the final approval from his academic advisor Dr. Frank for the completion of plaintiff's Ph.D. program in the department. Early in March of 1998, plaintiff had already applied for a graduation of his Ph.D. program in summer of 1998. He attended the ceremony on May 8, 1998.

(22) On December 18, 1998 plaintiff carded his dissertation with Dr. Frank's final approval to MSU Graduate School. In a letter dated December 18, 1998 from the Dean of MSU Graduate School to plaintiff, it was certified that "your dissertation has been received and its form has been approved by the office of The Graduate School."

(23) In the spring of 1999 plaintiff became concerned about his degree/dissertation. He had not received the copies of his dissertation that he had paid for. His repeated check of the Michigan State University Library failed to turn up his dissertation.

(24) On making inquiry on, plaintiff discovered that Dr. Frank deliberately failed to process the plaintiff's dissertation. Dr. Frank had not processed his dissertation and plaintiff had not been issued a graduate degree.

(25) Plaintiff reported the matter to the Department of CEPSE on October 18, 1999.

(26) On October 21, 1999 the chairperson of Department of CEPSE, College of Education, Dr. Prawat indicated that plaintiff's grievance would be, in accordance with Section 5.3.6.2 of the Student Handbook, handled at the "lowest level". Plaintiff was asked to discuss the problem with Dr. Becker and professor Reckase.

(27) On October 31, 1999 wrote to the Department of CEPSE, plaintiff expressed his concerns about Dr. Frank's taking credit for his thesis. Based on this note defendant Dr. Becker contacted Dr. Frank for further information.

(28) On February 6, 2000, as a result of that "investigation" Dr. Becker recommended four courses of dealing with this "problem." All of the suggestions would either permit plaintiff's SAM research paper to die or give Dr. Frank major credit for the paper.

(29) On February 12, 2000 Plaintiff rejected these suggestions and ask for a definite reply which would acknowledge that plaintiff was the author of his SAM research paper. If not plaintiff desired to carry the matter to the "next step".

(30) On February 23, 2000 Dr. Becker indicated she would confer with Dr. Frank to determine whether he would acknowledge and specify plaintiff's role in the authorship of the paper.

(31) On March 3, 2000 plaintiff clarified exactly why he rejected the earlier suggestion and asked Dr. Becker to obtain support for Dr. Frank's suggestion that he made important contributions to the paper.

(32) On March 23, 2000 plaintiff learned for the first time that he had not completed his degree by the end of Fall semester 1998 and was required to file a new Application. The reason given for this was that "Decision has not been received from your major/College". See Exhibit A.

(33) On April 16, 2000 Dr. Becker suggested basically the same solution to the dispute, giving Dr. Frank credit for plaintiff's work product. This solution was again rejected by plaintiff.

(34) On June 26, 2000, after several letters were exchanged between plaintiff and Dr. Becker, plaintiff

requested a personal review by the chairperson of the Department of CEPSE.

(35) On October 13, 2000 professor Reckase informed plaintiff that they found Dr. Frank had sent plaintiff's paper to only one individual at the University of Michigan and this individual had not read the paper. He suggested a letter to Dr. Frank warning him about distribution of "your work."

(36) On October 25, 2000 plaintiff rejected this suggestion and ask that they make "a final decision" as to the authorship of Dr. Frank's paper or report the case to the College of education.

(37) On November 30, 2000 these "investigators" failed to make a specific decision and instead requested plaintiff return a detailed list of his questions.

(38) Plaintiff reported the matter to the College of Education on January 11, 2001.

(39) On January 26, 2001 plaintiff received a "Summary of Decision" from investigators, finding that

A. Mr. Xu deserves credit for the central technical concepts in the paper;

B. Dr. Frank acted with good intentions in helping someone with "difficulties in communicating his ideas to others";

C. Dr Frank showed poor judgment in not asking plaintiff to be co-author of the "working paper";

D. No actual published or unpublished work has been disseminated which violates authorship ethical standards. The only visible result being a working paper in the "Review of Educational Research." See Exhibit B1-3.

(40) On March 1, 2001 plaintiff met with Dr. Wright. At that meeting Dr. Wright repeatedly offered to help plaintiff to get his Ph.D. degree rewarded. When Dr. Wright proved to be more of an obstruction than a help he was transferred to Dr. Book to start the grievance at the college level.

(41) On April 29, 2001 plaintiff filed a formal grievance against Dr. Becker with associate dean Cassandra Book. See Exhibit C1 ~ 3.

(42) Plaintiff was asked to meet with the Ombudsman Dr. Stan Soffin to clarify the grievance.

(43) Plaintiff filed several variations to his original grievance all of them were rejected as failing to specify "which rights have been violated."

(44) On August 13, 2001 the College of Education stated that it "would consider the matter closed" since plaintiff's was not timely filed.

(45) On March 19, 2002 plaintiff started the matter at the university level by mailing a letter to the President of Michigan State University. A cheek of postal records reveals that this letter was delivered on March 21, 2002 at 6:50 am and was signed for it by "B B Bryans." The University claimed that the letter was not received and there was no record of it in the files subsequently sent to plaintiff by MSU.

(46) Plaintiff further appealed this non-action. On February 17, 2003 the University through Dr. David E. Wright closed the matter citing plaintiff's failure to submit information to clarify his grievance. See Exhibit D.

Plaintiff was never granted a hearing before the College Level Board Hearing.

(47) In July of 2002 plaintiff was informed that a "hold" was on his account. As a smoke screen he was told it was the result of some $43.24 he owed MSU Clinical Center. However even after he paid the sum and asked for further clarification of the "hold" the degree was not granted, his doctoral dissertation was not bound, microfilmed nor submitted to the MSU library.

(48) On September 11, 2003, plaintiff received from Dr. Book copies of "Graduate Student Statement and Final Certification for Degree" by MSU Registrar's Office, and "Dissertation Proposal Approval" by College of Education. These forms were incomplete. They were only partially processed in the end of January of 2001 whereas the normal date for procession would be by the end of 1998 and in Fall semester of 1996. See Exhibit E 1-5.

(49) On September 15, 2003 plaintiff sent to Dr. Book the following email:

"Thank you for the last Thursday's meeting with you and for the copy of the forms I received from you.

I find that I need from you more information regarding my student status at MSU then and now before I decide to sign the forms. I'll contact with you soon." See Exhibit E6.

(50) On September 16, 2003 Dr. Book in an email replied:

"There is no more information I have to share with you. You are no longer a student at MSU, but you can have your degree awarded upon signature." See Exhibit E7.

(51) On March 3, 2004 Dr. Book informed plaintiff:

1. I did not and have not ever issued a "hold" on your student records.

2. There is no "hold" on your account now. From you own evidence, the "hold" that had been placed on your student record was removed when you paid your debt to the MSU Clinical Center."

(52) This statement was false and deceptive. When plaintiff received his transcripts, a memo dated May 3, 2004 from MSU stated that his credits in course CEP999 were "deferred." His Ph.D. degree was never conferred. In a printout dated May 13, 2004 from MSU Registrar's Office, it was stated that his Ph.D. degree was held due to "No College Decision Received."

(53) In June of 2004, plaintiff hired an attorney to get his student files at MSU.

In mid August, the attorney directly received in his office from an MSU employee two envelops containing four folders of plaintiff's student files at MSU. Plaintiff's student files at the MQM program level were requested by the attorney but not found in the envelope.

Plaintiff's files at MSU level were not given to the attorney.

FIRST CLAIM FOR RELIEF

Article XIV US Constitution
Deprivation of Property Without Due Process of Law
42 USC 1983

(54) Paragraphs (1-51) are herein incorporated by reference.

(55) Every person in the United States has a right to their intellectual property. This includes any research papers, thesis or other papers produced by the student.

(56) Defendant Dr. Kenneth A. Frank has taken credit for plaintiff's intellectual property without his permission..

(57) Defendants Michigan State University, Dr. Betsy J. Becker, Dr. David E. Wright, and the Michigan State University College of Education, acting within the scope of their employment and under color of state and local law and policies of Michigan State University, have conspired to deprive plaintiff the full credit and use for his property.

(58) Relevant information was withheld from plaintiff. Information requested under the Freedom of information act was deliberately withheld.

SECOND CLAIM FOR RELIEF
Article IV Equal Protection

(59) Paragraph 1-56 are incorporated by reference.

(60) Defendants Michigan State University, Dr. Betsey Becker, Dr. David E. Wright and the Michigan State University College of Education have the duty to award plaintiff a Doctorate Degree in that he has met all the criteria needed to be awarded the Degree.

(61) All of the above Defendants acting under color of state law and local laws and policies of Michigan State University have conspired to deny plaintiff the right to this degree.

THIRD CLAIM FOR RELIEF
Article XIV Equal Protection

(62) Paragraphs (1-59) are herein incorporated by reference.

(63) The Defendant Michigan State University has policies, procedures to prevent the taking of a student's property and or prevent the unlawful use of a "hold" to prevent a student from receiving an earned degree.

(64) In deliberate indifference towards this plaintiff the above defendants have conspired to prevent him a full and fair hearing on the grievances set forth above. Letters to the President were deliberately lost or not responded to.

(65) The above defendants have placed barriers and requirements on plaintiff and have rejected his grievances on technical grounds for the sole purpose of delaying and or denying him due process.

FOURTH CLAIM FOR RELIEF
Art I US Constitution Freedom of Speech

(66) Plaintiff incorporates by reference paragraphs (1-63).

(67) The above conduct by Defendants violated Plaintiff's right to freedom of speech under the First Amendment to the Constitution Art I U.S. Constitution by preventing plaintiff from having full credit for his research paper and publishing a letter clearly indicated he did not have a degree nor did he publish a thesis.

(68) In addition the above defendants violated his free speech rights by censoring and chilling Plaintiff's speech

and preventing him from exercising his First Amendment Rights.

FIFTH CLAIM FOR RELIEF
Art I US Constitution Freedom of Speech 42 USC 1983

(69) Paragraphs (1-66) are herein incorporated by reference.

(70) The above Defendants violated Plaintiff's right to be free of retaliatory treatment based on his freedom of speech by sending unsolicited to several members and organizations in the academic community a list showing that plaintiff had not submitted his Doctoral Thesis nor had he received his doctorate.

SIXTH CLAIM FOR RELIEF
State Claim Defamation and Slander

(71) Paragraphs (1-68) ere herein incorporated by reference.

(72) Defendant Dr. Betsy J. Becker caused to be sent to various institutions of higher learning and other research facilities a false statement that plaintiff's degree was pending and he had not submitted a Doctoral Thesis. This statement was not solicited and was done solely to discredit plaintiff.

SEVENTH CLAIM FOR RELIEF
State Common Law Claim for Intentional
Infliction of Emotional Distress

(73) Plaintiff herein incorporates paragraphs (1-70).

(74) Defendants owed Plaintiff a ministerial duty, operational and non-discretionary duty to take reasonable precautions to protect Plaintiff from harassment, abuse, embarrassment, ridicule, and discrimination that can reasonably be anticipated.

(73) Plaintiff had a good reputation for work done prior to his applying for a Degree at Michigan State University. He had taught at a University level and was highly respected.

(76) Defendants engaged in extreme and outrages conduct with the intent of, and with reckless disregard for causing emotional distress by wrongfully denying him authorship of the above described "SAM research paper", denying him his Doctorate Degree and publishing a statement that he had submitted no Doctoral Dissertation caused him sever and extreme emotional distress.

EIGHTH CLAIM FOR RELIEF

State Claim Negligent Infliction of Emotional Distress

(77) Plaintiff incorporates by reference paragraphs (1-74) of this complaint.

(78) Defendants in the course of their ministerial operational, and non-discretionary job responsibilities has a duty to protect Plaintiff from harassment, abuse, embarrassment, ridicule, and discrimination that could reasonably be anticipated.

(79) Defendants negligently failed to protect Plaintiff from harassment, abuse, embarrassment, ridicule, and discrimination based on his legitimate right to his property and or degree.

REQUEST FOR RELIEF

Wherefore, Plaintiff respectfully requests that the court

(A) Issue an injunction or declamatory relief ordering Defendant Michigan State University to Issue him his Doctorate Degree and have his SAM research paper and or Doctoral Dissertation published in plaintiff's sole name. That a statement be sent to other institutions of higher learning and other relevant institutions.

Dated December 7, 2004 /s/ _____
JiQiang Xu
Plaintiff

Dated December 7, 2004 /s/ _____
James D. Lovewell
Attorney for Plaintiff

Exhibit A

MICHIGAN STATE UNIVERSITY

OFFICE OF THE REGISTRAR
ADMINISTRATION BUILDING

EAST LANSING - MICHIGAN - 48824-1046

March 23, 2000

TO: Xu, Jiqiang
3030 Trappers Cove Trl 3A
Lansing, MI 48910

FROM: DEGREE and CERTIFICATION

A review of your academic record indicates that you will not have completed your degree requirements by the end of FALL SEM 1998 for the reason(s) listed below:

Decision has not been received from your major/college.

It will be necessary for you to complete a new Application for Graduation for the semester in which you expect to complete your requirements.

Please contact your department if you have any questions concerning these requirements.

cc: College: Education
Major: Measurement & Quantitative Meth

Exhibit B 1

Summary of Deliberations
over the Issue of Authorship
between Jiqiang Xu and Ken Frank

Mark D. Reckase and Betsy Jane Becker
January 26, 2001

Our understanding of the issue.

In October 1999, Jiqiang Xu sent a letter to the Department of Counseling, Educational Psychology, and Special Education (CEPSE) describing a area of contention he had with Ken Frank, a faculty member in the department and former dissertation advisor to Mr. Xu. The matter was referred to the Measurement and Quantitative Methods (MQM) unit by the CEPSE chair, Dick Prawat. Dr. Frank is a faculty member in MQM and Mr. Xu has completed the MQM program of study. We (Mark and Betsy) are co-coordinators for the MQM unit within CEPSE. Mark was relatively new to the Department and had only a single introduction to Mr. Xu prior to this event; therefore he believed he could objectively evaluate the facts of the matter. Betsy knew Mr. Xu both through serving on his dissertation committee, and through Mr. Xu's membership in Betsy's research group. While she was familiar with Mr. Xu and his work, Betsy also felt she could be fair in evaluating the issue. We agreed to work together to try to handle the concerns Mr. Xu had raised.

Our understanding of the issue is that Mr. Xu believes that Dr. Frank was unfairly taking credit for work concerning spatial autoregressive models (or SAM) begun by Mr. Xu as part of a required apprenticeship project in the Department

and elaborated for subsequent presentations at a professional meeting. The work is also related to the work of Mr. Xu's dissertation, and to other work that Dr. Frank has done in the area of social network analysis. Also, we believe that Dr. Frank began work on a joint paper, called the "working paper" in correspondence, and cited it in a publication without the permission of Mr. Xu. Dr. Frank believes that he made major contributions to both the write-up of the research and to the development of ideas, and therefore should have joint authorship. The draft paper includes some work that was not a part of Mr. Xu's apprenticeship work. Mr. Xu believes that some of the work contributed by Dr. Frank is problematic or incorrect.

Part of the problem seems to be an accident of the listing of authors for a paper presented by Mr. Xu at a professional meeting in Barcelona, Spain, with Dr. Frank listed as second author.

Exhibit B2

From our investigation, we believed that the issues were:

1. Who deserved to have lead authorship on the draft "working paper" in question?

2. Was a paper published or distributed that inaccurately represented the authorship of the work?

3. Did Dr. Frank do anything inappropriate (Mr. Xu has used the word "illegal") regarding issues of authorship?

4. Did Dr. Frank work with Mr. Xu in good faith?

Our investigation.

After receiving the initial correspondence from Mr. Xu, we tried to determine the actual facts of the case by talking to Mr. Xu and Dr. Frank and checking the literature to determine the status of publication or presentation of the work in question. There is extensive documentation of Mr. Xu's position in the e-mail correspondence. We also asked for and received Dr. Frank's account of the events. In February 2000 we sent to Mr. Xu a summary of what we believed to be the facts of the case along with some possible resolutions to the issue, but we could not determine whether Mr. Xu found any of the alternatives acceptable.

In April 2000 we *proposed* a solution to Mr. Xu that included (1) having Dr. Frank write a letter acknowledging Mr. Xu's work, (2) having Dr. Frank remove Mr. Xu as a co-author of the working paper because Mr. Xu believes there are flaws in that work, but Dr. Frank would cite Mr. Xu's dissertation as a source of the ideas, and (3) Dr. Frank only

distribute work on the topic that is clearly his without Mr. Xu as a co-author. In hindsight, it appears that Mr. Xu might have considered this as an approved resolution rather than a proposal waiting his approval. In further correspondence, he seems to be waiting for a letter from Dr. Frank even though we never had correspondence from Mr. Xu agreeing to the resolution.

After receiving a reply from Mr. Xu at the end of Spring term we decided to meet with him because we were having difficulty determining what he would accept as a fair conclusion to our evaluation. However because of conflicting summer travel schedules we were not able to meet until early August. Following that correspondence and meeting we determined that the "working paper" on the topic had only been distributed to one person and that person had not read the document, and in fact had misplaced it. None of this work has been submitted for publication nor has it been available to anyone through any other means except the single person mentioned above.

Exhibit B 3

After the April proposal, we were unable to determine what resolution Mr. Xu would find acceptable. We gave him all of the information we had and tried to determine how the issue could be resolved. We never could come to closure, and indeed after our last correspondence there was some sense that Mr. Xu wanted us to broadened our inquiry to include other work (e.g., in a note dated September 23, Mr. Xu wrote "I emphasized that I was talking about all of Ken's papers / claims of paper that might have different titles but actually focused on the SAM work.") Indeed we believe that Dr. Frank has not worked on issues related to SAM and Mr. Xu's efforts in the area since Mr. Xu raised this issue. However, SAM covers a large area of work and we do not believe it would be sensible to restrict Dr. Frank from ever working on this topic again. Mr. Xu has become frustrated with the process and has now moved it to a higher level in the University.

Our Conclusions.

After reviewing all of the materials, we have concluded the following:

1. Mr. Xu deserves credit for the central technical concepts in the papers in question.
2. Dr. Frank appears to have had good intentions to help someone who has difficulties communicating his ideas to others get his work into published form. Because of the assistance that was given, there was an expectation of joint authorship.
3. Dr. Frank showed poor judgement in not asking Mr. Xu to be co-author of the working paper before beginning to write it, and in not resolving the issues of lead authorship

and co-authorship of the papers at the Barcelona meeting and in citing the working paper in a publication.

4. No actual published or unpublished work has been disseminated that violates any authorship ethical standards. The only visible result is the reference to the working paper in the *Review of Educational Research* and the listing of a paper in the program at the Barcelona conference.

We have been frustrated by the process as well. We have tried to be creative in developing a means to resolve the issue, but we have never been able to discern a resolution to the issue that would be acceptable to Mr. Xu. As a result, we were unable to come to closure on the issue.

Exhibit C 1

JiQiang Xu
3030 Trappers Cove, 3A Lansing,
MI 48910
(517) 887-7357
Xujiqian@pilot.msu.edu
April 29, 2001

College of Education
Michigan State University
E. Lansing, MI 48824

Dear Dr. Cassandra Book:

I have received your letter of March 20, 2001. Thank you very much for you kind work. I have found that the report attached to your letter written by Dr. Becker and Dr. Reckase dated January 26, 2001 is unacceptable. I now officially require the further action at the college level.

This is my formal letter of grievance against Dr. Ken Frank and Dr. Betsy Becker of MQM program, Department of CEPSE for reasons regarding my authorship problem.

I. About Dr. Frank's so-called "working paper" and his action of sending that paper/claim of the existence of that paper to the public behind me.

In my letter of January 11, 2001 to Dr. Ames and Dr. Schwille, I said: "My advisor and I have got disagreement since early 1997. The core issue is the authorship of my SAM work." I said: "(I) reported the case to the Department of CEPSE on Oct. 18, 1999. The Chairperson Dr. Prawat assigned Dr. Becker and Dr. Reckase to deal with this case. Since then we got about twenty letters and one informal

meeting in one year. I also delivered a package with 73 pages of 29 copies to Dr. Reckase to answer their four questions on Nov. 29, 1999. However, after for more than one year, I still even didn't know anything about Dr. Frank's 'considerable contribution' to my SAM work."

I also said in that letter: "Now I report the case to you, College of Education and hope to resolve this problem at the college level based on the facts. In the following, I raise four questions that I emphasized again and again at the department level but were almost not even touched. It might be better that you read the question-related context to have a full sense." The four questions are as below.

1. Dr. Frank's stand regarding his contribution to my SAM work was inconsistent. What is his official stand now?
2. What was his real contribution to my SAM work?
3. Is it legal or not that Dr. Frank sent his claim / 'working paper' out without letting me know for long?
4. Would you help to ask Dr. Frank a question: has he ever sent his claim / 'working paper' to places other than RRE and Barcelona?

All my previous letters, emails and copies sent to Dr. Prawat, Dr. Becker and Dr. Reckase are

official and now become attachments to my this letter. I just list few of them as references for your convenience.

II. About Dr. Becker's stand before and after I reported the case to CEPSE in Oct. 1999.

I appeal to you to examine Dr. Becker's special stand expressed in her letter to me dated Sep. 29, 1998. Her letter was a response to my letter of Sep. 13, 1998 regarding Dr. Frank's losing his temper with me in a meeting on Sep. 10, 1998.

Reporting to Dr. Ames and Dr. Schwille in my letter of Jan. 16, 2001, I said: "Instead of recognizing the freedom of expression and communication which was the most basic condition at MSU; instead of recognizing the mutual respect and understanding between an instructor and a student; and instead of commenting Dr. Frank's crude behavior in a pure academic disagreement, Dr. Becker was giving me a big lesson by telling me that my words of 'academically equal' wrong." I continued: "In order to convince me that Dr. Frank and I were not 'academically equal', Dr. Becker listed out Dr. Frank's achievements including his publication, presentation, etc. from his curriculum vitae. I truly didn't believe that Dr. Becker was unable to tell the difference between the 'academic freedom of expression' and the 'academic curriculum vitae' especially when she was a chairperson of the 'Graduate Program of MQM'. Dr. Becker's stand regarding this event was special."

In the same letter, I also reported the situation that Dr. Becker was lying to my face, covering the case-related facts when Dr. Becker, Dr. Reckase and I were having an informal meeting on Aug. 8, 2000. Please check that letter for details. This was serious especially when Dr. Becker had been

officially assigned by Dr. Prawat to deal with the case at the department level.

III. My stand.

In the end of my letter "One year summary" dated Oct. 25, 2000, I reported to Dr. Prawat, Dr. Becker and Dr. Reckase: "I'm facing such a situation: you didn't dismiss my questions, you didn't answer my questions, but you want to close the case.

If you have difficulties to give me answers, I suggest that you may contact with or report the case to the College of Education. I may also report the case to the College of Education directly if you agree. Without a clear response from Dr. Frank to my key questions regarding my authorship, this case will never end."

Now my stand is the same. I'm expecting to get Dr. Frank's responses to my questions from you as the first step of all others. This is the core issue of all our confusion and disagreement. Without knowing the basic facts, no resolutions can be considered.

What Dr. Becker had done hurt me. I expect that Dr. Becker make her explanation why she did in that way and you examine Dr. Becker's special stand to find how much she is responsible for that.

I want to make it clear that you may dismiss any of my questions. You just let me know. But if you (College of Education) are unable to give me responses from Dr. Frank for whatever reasons, please let me know clearly and we need to end the case at the college level. I surely don't want to spend another full year for no results.

Exhibit C3

By the way, Dr. David Wright mentioned in his email of March 19, 2001 that you would be sending me a copy of the draft manuscript "Maximum likelihood Estimation for Models with Network Effects" by Kenneth Frank and Jiqiang Xu. So far I haven't received it yet. Would you please send me one in your convenience?

I truly need to get information from you about the procedure for hearing. If you could make arrangement, a brief meeting with you would be helpful for me to learn the formal process. Please let me know your plan.

This letter comes to you in both e-version and hard copy. They are the same.

Thank you very much.

Sincerely,

JiQiang Xu (signature)

References

Sep. 29, 1998, Dr. Becker's letter to me.
Oct. 25, 2000, my letter "One year summary" to Drs. Prawat, Becker and Reckase.
Jan. 11, 2001, my letter to Drs. Ames and Schwille.
Jan. 16, 2001, my letter to Drs. Ames and Schwille.

Exhibit D

MICHIGAN STATE
UNIVERSITY

OFFICE OF RESEARCH ETHICS AND STANDARDS

Assistant Vice President for Research Ethics and Standards
Michigan State University
204 Olds Hall
East Lansing, MI
48824

517/432-4500
FAX: 517/353-2976

MSU is an affirmative-action, equal-opportunity institution.

February 17, 2003

Mr. JiQiang Xu
3030 Trappers Cove, #3A
Lansing, MI 48910

Dear Mr. Xu:

I have been asked to respond on behalf of the University to your letter of 7 January 2003, which you indicate was sent to the University's Executive Officers.

In response to your concerns arising out of your interactions with Dr. Frank regarding your dissertation research, in March 2001, the University's College of Education offered you the opportunity to have your concerns reviewed by the college level hearing board pursuant to the GSRR Procedures. For

some unknown reason, you chose not to participate in this process.

In response to your later attempts to seek review of your concerns, Dr. Cassandra Book advised you in letters dated 13 August 2001 and 15 August 2002 that your requests were untimely, and that the University considered the matter closed.

In response to your January 7th letter, please be advised that the University's position remains that this matter is closed, and that you waived any right to review of your concerns by failing to participate in the college level hearing offered to you in March 2001. Please also note that I disagree with your characterization of our prior conversations.

Sincerely,

/s/ _____
David E. Wright
Assistant Vice President for Research
Ethics and Standards and
University Intellectual Integrity Officer

c: President Peter McPherson
Provost Lou Anna Simon

FOLD-OUT EXHIBIT
Exhibit E1

12/22/98
Date

MICHIGAN STATE UNIVERSITY
OFFICE OF THE REGISTRAR

1 OF 2

GRADUATE CREDIT STATEMENT AND FINAL CERTIFICATION FOR DEGREE

Name	Personal ID #	Major	Semester/Year	Degree
Xu, Jiqiang	A10916880	2251	FS98	PHD

Major	Credits Required	Status
Measurement& Quantitative Meth	0.00	REGULAR

Previous degrees earned:

Degree	Institution Granting The Degree	Year
MS	MSU	1990
BS	Fudan University	1968

Date final examination passed (student must be enrolled) _____

THESIS OR DISSERTATION INFORMATION

If a thesis or dissertation is being submitted as part of the degree requirements, please complete the following items:

Doctoral Dissertation ☑ Master's Thesis ☐

Credits and grade for thesis (899). (All dissertation credits and a P (Pass) grade will be assigned when student graduates.) Credits _____ Grade _____

Thesis or dissertation director (name, professional rank)
Ken Frank Assistant Professor

Chairperson of guidance committee (name, professional rank)
Ken Frank Assistant Professor

Date comprehensive examination passed (student must be enrolled) 01/17/97

LANGUAGE INFORMATION

Languages passed _____ Language _____ Date _____

Language _____ Date _____

Language substitute courses (if applicable) _____

UNIVERSITY REQUIREMENTS MET	YES	NO
Master's Degree		
Residency requirement (8 credits on campus)		
18 crs. at 800/900 level		
Time limitation		
Doctoral/Educational Specialist Degree		
Residency requirement (2 consec.sem. (full time or 3 consec. terms (full time)	Y	
Time limitation	Y	

NOTE: Remember to convert quarter credits to semester credits when making your decision regarding graduation.

☒ APPROVED (provided current course work is satisfactorily completed.

☐ DISAPPROVED (will not complete requirements this term.

ALL COURSES TAKEN ON THE GRADUATE LEVEL ARE LISTED BELOW. CROSS OFF THE COURSES THAT SHOULD NOT COUNT TOWARD THIS DEGREE.

CONDITIONAL GRADES NOT CLEARED BY THE LAST DAY OF THE SEMESTER WILL PRECLUDE GRADUATION.

Subject Code	Course Number	Grades and Credits: 4.0	3.5	3.0	2.5	2.0	P	CR	I (DF ET)	C U R
ENG	0094									
ENG	0095									
MTH	0821		3							
STT	0841		4							
STT	0852		3							
STT	0983		3							
MTH	0851	3								
MTH	0854		3							
MTH	0853	3								
MTH	0856	3								
STT	0872		3							
STT	0985		3							
STT	0980	3								
STT	0852									
STT	0995	3								
STT	952		3							
CEP	821	3								
CEP	990						3			
CEP	836		4							

MORE COURSES EXIST

Total semester transfer credits 0.00
Total semester 899 credits 0.00
Total semester 999 credits 38.00

NOTE: DEPARTMENT - MAKE COPY PRIOR TO FORWARDING TO COLLEGE
COLLEGE - MAKE COPY PRIOR TO FORWARDING TO OFFICE OF THE REGISTRAR

Department Chairperson _____ Date _____

Associate/Assistant Dean _____ Date _____

FOLD-OUT EXHIBIT
Exhibit E2

12/22/98
Date

MICHIGAN STATE UNIVERSITY
OFFICE OF THE REGISTRAR

2 OF 2

GRADUATE CREDIT STATEMENT AND FINAL CERTIFICATION FOR DEGREE

Name	Personal ID #	Major	Semester/Year	Degree
Xu, Jiqiang	A10916880	2251	FS98	PHD

Major	Credits Required	Status
Measurement& Quantitative Meth	0.00	REGULAR

Previous degrees earned:

Degree	Institution Granting The Degree	Year

Date final examination passed (student must be enrolled) _____

THESIS OR DISSERTATION INFORMATION

If a thesis or dissertation is being submitted as part of the degree requirements, please complete the following items:

Doctoral Dissertation ☐ Master's Thesis ☐

Credits and grade for thesis (899). (All dissertation credits and a P (Pass) grade will be assigned when student graduates.)

Credits	Grade

Thesis or dissertation director (name, professional rank)
Ken Frank Assistant Professor

Chairperson of guidance committee (name, professional rank)
Ken Frank Assistant Professor

Date comprehensive examination passed (student must be enrolled) _____

LANGUAGE INFORMATION

Languages passed _____ Language _____ Date

Language _____ Date

Language substitute courses (if applicable) _____

UNIVERSITY REQUIREMENTS MET	YES	NO
Master's Degree		
Residency requirement (6 credits on campus)		
18 crs. at 800/900 level		
Time limitation		
Doctoral/Educational Specialist Degree		
Residency requirement (2 consec.sem. (full time or 3 consec. terms (full time)		
Time limitation		

NOTE: Remember to convert quarter credits to semester credits when making your decision regarding graduation.

☐ APPROVED provided current course work is satisfactorily completed.

☐ DISAPPROVED will not complete requirements this term.

ALL COURSES TAKEN ON THE GRADUATE LEVEL ARE LISTED BELOW. CROSS OFF THE COURSES THAT SHOULD NOT COUNT TOWARD THIS DEGREE.

CONDITIONAL GRADES NOT CLEARED BY THE LAST DAY OF THE SEMESTER WILL PRECLUDE GRADUATION.

Subject Code	Course Number	Grades and Credits 4.0	3.5	3.0	2.5	2.0	P	CR	I DF ET	C U R
CEP	990						2			
CEP	9910	4								
CEP	9910		4							

NOTE: DEPARTMENT - MAKE COPY PRIOR TO FORWARDING TO COLLEGE
COLLEGE - MAKE COPY PRIOR TO FORWARDING TO OFFICE OF THE REGISTRAR

Total semester transfer credits _____
Total semester 899 credits _____
Total semester 999 credits _____

Department Chairperson Date

Associate/Assistant Dean Date

Exhibit E3

MICHIGAN STATE UNIVERSITY

RECORD OF DISSERTATION AND ORAL EXAMINATION REQUIREMENTS FO***

Department of CEPSE

Student's Name JiQiang Xu

Student Number A10916880

1. Dissertation Title: Spatial Autoregression Models: Its solutions of parameter estimation and applications

2. Dissertation has been _X_ Accepted

3 Oral examination in defense of the dissertation was conducted on 8-6-98

The student _X_ Passed

4 Dissenting opinions and signatures of dissenting examiners, if any:

5. Subject to the satisfactory completion of other requirements, this student is recommended for the degree Doctor of:
_X_ Philosophy

Signature of Examiners:

1. /s/ _____
   Ken Frank
   Chairperson of Committee

2. /s/ _____
   Betsy Jane Becker 1/26/01

3 /s/ _____
   Dennis Gilliland 1/29/01

6. Major revisions required:

7. Revisions, if any, approved:

   /s/ _____
   Approved: Department Chairperson

FOLD-OUT EXHIBIT
Exhibit E4

MICHIGAN STATE UNIVERSITY

Exhibit E4

REPORT OF THE GUIDANCE COMMITTEE

See the graduate catalog regarding composition of guidance committee and deadlines for its formation and for filing this report listing all degree requirements.

Name Xu (Last) Jiqiang (First) (Middle) Student No. A10916880 Ph.D. X D.M.A. ____ Ed.D ____ Ed.S. ____

First term in Doctoral Program Fall 1994 Dept. CEPSE Major Educational statistics

Bachelor of Science Math Fu Dan U 1988 Math Master of Science Michigan St U 1990 statistics
(Institution) (Major) (Institution) (Major)

Tentative Dissertation Subject Spatial Autoregression models; Its solution of Parameter estimation

Director Ken Frank Languages (if applicable) ____

Will the student's research involve the use of human subjects or human materials ____Yes X No, warm-blooded animals ____Yes X No, or hazardous substances ____Yes X No? I understand it is necessary to obtain institutional review and approval prior to initiating any research involving the use of human or animal subjects or hazardous materials.

(Student's signature) Mo./Day/Yr.

Doctoral Program *(please print or type and cluster by field)*

Dept.	Course No.	Grade	Title	No. CR
CEP	900		proseminar in Ed Psych	3
CEP	930		Educational Inquiry	4
CEP	921		psychometric Theory I	3
CEP	920		~~psychometric Theory II~~ Educational Assessment	3
CEP	922		psychometric Theory II	3
CEP	936		Synthesis in Ed Research	4
CEP	933		Quantitative methods in Ed	4
CEP	937		Survey Research methods	4
CEP	991b		special Topics in Ed stat (yes)	4
CEP	826		Evaluation of Ed programs	3
CEP	991b		special Topics in Ed stat (social networks)	4
CEP	990		Independent study	7
CEP	999		Doctoral Dissertation	16

Dept.	Course No.	Grade	Title	No. CR

Approved *(Please print guidance committee members' names below signatures)*

1. [signature] 6-16-96
Guidance Committee Chairperson Mo./Day/Year
2. [signature] 5/16/96
BETSY JANE BECKER
3. [signature] 5/16/96
DENNIS GILLILAND
4. [signature] 5/16/96
Stephen W. Raudenbush
5. ____
6. ____

Course Credits *(in addition to at least 36 credits of 999)* ____
Comprehensive examination areas:

The candidate expects to pass the Comprehensive Examinations by ____ Term, 1996.

Student [signature] Mo./Day/Year

Department Chairperson [signature] Mo./Day/Year

College Dean ____ Mo./Day/Year

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Exhibit E5

Dissertation Proposal Approval
Advanced Graduate Studies
College of Education

Xu, JiQiang

Student Number (PID): A10916880

Title of Dissertation (may be tentative, but should be accurate and descriptive): Spatial Autoregression Models; Its solutions of Parameter Estimation and Applications

Anticipated date of completion: 9-98

Federal and University regulations require that all proposed research projects involving human subjects be reviewed and approved by the University Committee on Research Involving Human Subjects (UCRIHS).

Will your research involve human subjects: X No

If yes, when was your proposal sent to the UCRIHS for review:

I, the undersigned student, understand that the research cannot begin until the UCRIHS grants its approval.

Please do not file this form with the Student Affairs Office until the proposal and supporting application materials have been sent to the UCRIHS.

Required signatures:

Student:_____

Guidance Committee Chair: /s/_____

Guidance Committee Members: /s/_____ 1/26/01

/s/_____ 1/29/01

Department Chairperson: /s/_____

Exhibit E6

Dear Dr. Book,

Thank you for the last Thursday's meeting with you and for the copy of the forms I received from you.

I find that I need from you more information regarding my student status at MSU then and now before I decide to sign the forms. I'll contact with you soon.

Sincerely,

J. Xu
Sep. 15, 2003

Exhibit E7

Date: Tue, 16 Sep 2003 12:58:38 -0400
To: Jiqiang Xu < >
From: Cass Book
Subject: Re: Need more information

There is no more information I have to share with you. You are no longer a student at MSU, but you can have your degree awarded upon signature.

Cassandra Book Associate Dean
College of Education
518 Erickson Hall
MSU

APPENDIX E

US DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed January 20, 2005]

JiQiang Xu,	)
Plaintiff,	)
	)
v.	)
	)
MICHIGAN STATE UNIVERSITY,	)
MICHIGAN STATE UNIVERSITY	)
COLLEGE OF EDUCATION,	)
DR. KENNETH A. FRANK,	)
DR. BETSY J. BECKER,	)
DR. DAVID E. WRIGHT,	)
DR. CASSANDRA BOOK,	)
Defendants.	)
	)

Hon. Richard Alan Enslen

James D. Lovewell (P16818)
Attorney for Plaintiff
617 N. Capitol Avenue
Lansing, MI 48933
(517) 420-2348

Theresa J. Kelly (P60696)
Michigan State University
Attorney for Defendants
494 Administration Building
East Lansing, MI 48824-1046
(517) 353-3530

PLAINTIFF'S INDEX TO
BRIEF IN OPPOSITION TO MOTION TO DISMISS

List of Exhibits

Exhibit A-1 ~ 16	Graduate Student Rights and Responsibilities, <Spartan Life>, 2004-05
Exhibit B	Letter dated August 13,2001 from Dr. Book to JiQiang Xu
Exhibit C	Letter dated August 28, 2001 from JiQiang Xu to Dr. Book
Exhibit D-1 ~ 5	Letter dated March 9, 2002 from JiQiang Xu to President McPherson
Exhibit E	Post Office certificate dated May 7, 2002
Exhibit F	Letter dated May 11, 2002 from JiQiang Xu to President McPherson

Exhibit G	Letter dated August 15, 2002 from Dr. Book to JiQiang Xu
Exhibit H	Letter dated October 29, 2002 from Dr. Sue Carter to JiQiang Xu
Exhibit I-1 ~ 4	Letter dated January 7, 2003 from JiQiang Xu to Michigan State University
Exhibit J	Letter dated February 17, 2003 from Dr. Wright to JiQiang Xu

Exhibit A-1

SPARTAN LIFE

2004-05
Student Handbook
and Resource Guide

Information
Services

Rights and
Responsibilities

Regulations

MICHIGAN STATE
UNIVERSITY

Exhibit A-2

TABLE OF CONTENTS

Letter from the Vice President for
Student Affairs and Services 2

Character & Goals of MSU
Guiding Principles, Board of Trustees,
Officers of the University 3

Student Affairs and Services
departments, directors, functions and services 4

PART I
INFORMATION AND SERVICES

Academic Affairs
advising, assistance, libraries 6

Activities
organizations, Greek Life, community service,
arts, films, gardens, museums, MSU Union 9

Career Services
information, counseling, career fairs 13

Employment
work now or after graduation 14

Food
where to get it on campus 18

Governance at MSU
ASMSU, COGS, student involvement,
all-U committees 19

Health Services
on campus 23

Housing
on campus and off campus 25

Personal Security
for you and yours, including MSU Statement
on Sexual Assault 26

Recreation
sports for fun and keeping fit 31

Services for Special Groups
adult students, children/families,
students with disabilities, internationals,
lesbians/bis/gays, students of color,
veterans, women 33

Transportation
to, from, and around campus 35

PART II
RIGHTS AND RESPONSIBILITIES

Legislative and Judicial Systems 38

Academic Freedom for Students at MSU
basic rights and responsibilities 43

Graduate Student Rights and Responsibilities 61

Medical Student Rights and Responsibilities
(reference only) 74

PART III
REGULATIONS

General Student Regulations 77

Residence Hall Bill of Rights and Regulations
Undergraduate and Graduate 79

University Apartments Community
Bill of Rights and Responsibilities 83

Alphabetical Listing of Other Regulations,
All-University Policies, Administrative Rulings,
and Selected Ordinances 84

INDEX 126

2004
Published by Department of Student Life,
Division of Student Affairs and Services
101 Student Services, 355-8286
Michigan State University
Edited by Lisa Vanwelsenaers

The text of this publication is accessible at
website: *http://www.vps.msu.edu/SpLife/default.pdf*

MSU is an affirmative-action, equal-opportunity institution

Exhibit A-3

[p. 61]

GSRR
GRADUATE STUDENT RIGHTS AND RESPONSIBILITIES

This document provides the framework for graduate student rights and responsibilities within the university, specifically regarding the student conduct, academic pursuits, keeping of records, and employment. It describes procedures for formulating regulations governing graduate student conduct and for providing due process in the adjudication of graduate student disciplinary cases. It also defines channels and procedures for student complaints and grievances.

ARTICLE 1: Graduate Student Rights and Responsibilities

ARTICLE 2: Academic Rights and Responsibilities for Graduate Students

ARTICLE 3: Student Records at Michigan State University

ARTICLE 4: Graduate Student Support

ARTICLE 5: Adjudication of Cases Involving Graduate Student Rights and Responsibilities

ARTICLE 6: Academic Governance

ARTICLE 7: Procedure for Amending and Revising This Document

ARTICLE 8: Definitions

HISTORY OF APPROVAL

The term "graduate assistant" referred to in the GSRR, Article 4, refers to graduate assistants who are not covered by the Graduate Employees Union (GEU) collective bargaining contract. Graduate teaching assistants in the GEU are covered by the GEU contract; not by the provisions in Article 4.

Exhibit A-4

[p. 62]

GRADUATE STUDENT RIGHTS AND RESPONSIBILITIES AT MICHIGAN STATE UNIVERSITY

FOREWORD

The foreword is not part of the document that follows. It supplies, however, a necessary perspective for interpreting the document. Graduate student rights and responsibilities at Michigan State University are part of the social and historical background of the University itself.

When, more than a century ago, the people of Michigan established this institution on the land-grant principle, they framed a new conception of the role of the university in American life.

A land-grant university is a trusteeship of intellect in the service of society. It gathers society's creative and intellectual powers and uses them to advance the common good and to solve fundamental problems.

That is the special character that has caused the land-grant university to become one of the great transforming agencies of the American scene. When it honors its commission, it acts not for the sake of the academic community, but for the sake of society. All members of the academic community – students, staff, faculty, administrators, and trustees – enact a trust of which society beyond the university is the proper beneficiary.

This document is significant not merely because it establishes that graduate students have certain rights and responsibilities, but particularly because it affirms that they are a party to the social trust shared by all in the university community who are charged with preserving and advancing the genius of scholarship and the conditions of inquiry which society has entrusted to our care.

PREFACE

This report, the *Academic Freedom for Students at Michigan State University,* and the *Medical Students Rights and Responsibilities* document, contain guidelines to the rights and duties of graduate students in matters of conduct, academic pursuits, keeping of records, and employment. This report describes structures and procedures for formulating regulations governing graduate student conduct, for interpreting and amending the guidelines, for adjudicating graduate student disciplinary cases, and for channeling student complaints, grievances, or concerns to faculty, staff, and administrators for appropriate action.

For the most part these provisions simply make explicit what has been long understood and practiced at Michigan State University. This report identifies rights and duties of graduate students and provides for graduate students a carefully prescribed system of due process. Rather than expounding a generalized abstract definition of academic freedom, this report provides an operational definition with concrete application of the concept of academic freedom for graduate students.

ARTICLE I
GRADUATE STUDENT RIGHTS AND
RESPONSIBILITIES AT

MICHIGAN STATE UNIVERSITY

1.1 Michigan State University is a community of scholars whose members include its faculty, staff, students, and administrators. The basic purposes of the University are the advancement, dissemination and application of knowledge. The most basic condition for the achievement of these purposes is freedom of expression and communication. Without this freedom, effective sifting and testing of ideas cease, and research, teaching, and learning are stifled. Knowledge is as broad and diverse as life itself, and the need for freedom is equally broad. Yet absolute freedom in all aspects of life means anarchy, just as absolute order means tyranny. Both anarchy and tyranny are antithetical to the purposes and necessities of the University. Therefore, the University always must strive to strike that balance between maximum freedom and necessary order that best promotes its basic purposes by providing the environment most conductive to the many faceted activities of instruction, research, and service.

1.2 Each right of an individual places a reciprocal responsibility upon others: the responsibility to permit the individual to exercise the right. The graduate student, as a member of the academic community, has both rights and responsibilities. Within that community, the graduate student's most essential right is the right to learn. The University has a duty to provide for the graduate student those privileges, opportunities and protections that best promote the learning process in all its aspects. The graduate student also has duties to other members of the academic community, the most important of which is

to refrain from interference with those rights of others which are equally essential to the purposes and processes of the University.

1.3 Regulations governing the activities and conduct of graduate students individually or collectively should not be comprehensive codes of desirable conduct; rather, they should be limited to the prescription of procedures for meeting the practical, routine necessities of a complex community and to the prohibition or limitations of acts that cannot be tolerated because they seriously interfere with the basic purposes and processes of the academic community, or with rights essential to other members of the community.

Exhibit A-5

[p. 63]

1.4 The graduate student is not only a member of the academic community, but a citizen of the larger society, who retains those rights, protections and guarantees of fair treatment held by all citizens which the University may not deny. The enforcement of the graduate student's duties to the larger society is, however, the responsibility of the legal and judicial authorities duly established for that purpose.

GUIDELINES

1.5 To protect graduate student rights and to facilitate the definition of graduate student responsibilities at Michigan State University, the following guidelines shall apply to those stipulations and conditions by which graduate conduct is regulated, broadly referred to as "regulations" in the remainder of this Article.

1.5.1 There shall be no regulation unless there is a demonstrable need which is reasonably related to the basic purposes and necessities of the University as stipulated herein.

1.5.2 To the maximum extent feasible, graduate students shall participate in formulating and revising regulations governing graduate student rights and responsibilities.

1.5.3 All regulations governing graduate student rights and responsibilities shall be made public in an appropriate manner.

1.5.4 Every regulation shall be as brief, clear and specific as possible.

1.5.5 Wherever rights conflict, regulations shall, to the maximum extent feasible, permit reasonable scope for each conflicting right by defining the circumstances of time, place and means appropriate to its exercise.

1.5.6 Regulations shall respect the free expression of ideas and shall encourage competition of ideas from diverse perspectives.

1.5.7 Procedures and penalties for the violation of regulations shall be designed for guidance or correction of behavior only.

1.5.8 Penalties shall be commensurate with the seriousness of the offense. Repeated violations may justify increasingly severe penalties.

1.5.9 There shall be clearly defined channels and procedures for the appeal and review of:

a. The finding of guilt in an alleged violation of a regulation.
b. The reasonableness, under the circumstances, of the penalty imposed for a specific violation.
c. The substance of a regulation or administrative decision which is alleged to be inconsistent with the guidelines in this document.
d. The lack of adherence to the applicable procedures in the adjudication.

1.5.10 Every regulation shall specify to whom it applies and whether responsibility for compliance lies with graduate students either individually or collectively.

1.6 A handbook of the University's current regulations and structures relating to student rights and responsibilities shall be made available to every member of the academic community.

ARTICLE 2
ACADEMIC RIGHTS AND RESPONSIBILITIES FOR GRADUATE STUDENTS

2.1 Preamble

2.1.1 The establishment and maintenance of the proper relationship between instructor and student are fundamental to the University's function, and require both instructor and student to recognize the rights and responsibilities which derive from it. The relationship between instructor and student as individuals should be founded on mutual respect and understanding together with shared dedication to the educational process.

2.2 Role of the Faculty in the Instructional Process

2.2.1 No provision for the rights of graduate students can be valid which suspends the rights of the faculty. The graduate student's right to competent instruction must be reconciled with the rights of the faculty, consistent with the principle that the competency of a professional can be rightly judged only by professionals. It is therefore acknowledged and mandated that

competence of instruction shall be judged by the faculty.

2.2.2 Colleges and departments/schools shall provide appropriate and clearly defined channels for the receipt and consideration of graduate student complaints concerning instruction. In no instance shall the competence of instruction form the basis of an adversarial proceeding before any of the judicial bodies established in this document.

2.2.3 Faculty shall have authority and responsibility for academic policy and practices in areas such as degree eligibility and requirements, course content and grading, classroom procedure, and standards of professional behavior in accordance with the *Bylaws for Academic Governance, The Code of Teaching Responsibility*, and other documents on faculty rights and responsibilities.

2.2.4 No hearing board established under this document shall direct a change in the evaluation of a graduate student which represents a course instructor's or guidance committee's good faith judgment of the graduate student's performance. In the event that an evaluation is determined to be based on inappropriate or irrelevant factors, the dean of the college shall cause the student's performance to be reassessed and good faith evaluation established. (See also Sections 2.3.10, 2.4.8, and Article 5.)

Exhibit A-6

[p. 64]

2.3 Rights and Responsibilities of the Graduate Student

2.3.1 In all areas of graduate education pertaining to academic rights and responsibilities, there shall be no discrimination on the basis of race, color, gender, national origin, political persuasion, sexual orientation, marital status, disability, age, religion, height, weight, genetic information, or family status.

2.3.2 The graduate student has a right to be governed by written academic regulations. The graduate student has a right to accurate, timely, and clearly stated information concerning the general academic requirements for establishing and maintaining an acceptable academic standing, the graduate student's academic relationship with the University, and the details of any special conditions which may apply. Requirements for the student's academic program and written academic regulations, including copies of professional behavior, shall be made known and made available by the administering unit at the time of the student's first enrollment. Graduate students are responsible for informing themselves of University, college, department, and school requirements as stated in unit publications and in the University catalog. In planning to meet such requirements, students

are responsible for consulting with their academic advisers and guidance committees.

2.3.3 The graduate student, regardless of degree program, has a right to the best advice the unit can provide concerning program planning, research, professional expectations, selection of courses and professors, and general degree requirements.

2.3.4 Units shall maintain records for their graduate students, specifying and/or containing degree requirements, course waivers and substitutions, program changes, and other stipulations directly affecting their degree programs. Graduate students shall be provided access to and/or a copy of these records upon request.

2.3.5 The graduate student shall be free to take reasoned exception to information and views offered in instructional contexts and to reserve judgment about matters of opinion, without fear of penalty or reprisal.

2.3.6 Graduate students and faculty share the responsibility of maintaining classroom decorum and collegial atmosphere which insures teaching and learning.

2.3.7 The graduate student shares with the faculty the responsibility for maintaining the integrity of scholarship, grades, and professional standards.

2.3.8 The graduate student is responsible for learning the content of a course of study according to standards of performance established by the faculty and for adhering to standards of professional behavior established by the faculty.

2.3.9 The graduate student has a right to academic evaluations which represent good faith judgments of performance by course instructors and guidance committees. Course grades shall represent the instructor's professional and objective evaluation of the graduate student's academic performance. The graduate student shall have the right to know all course requirements, including grading criteria, and procedures at the beginning of the course. (See also the *Code of Teaching Responsibility*).

2.3.10 The graduate student has a right to protection against improper disclosure of information concerning academic performance and personal characteristics such as values, beliefs, organizational affiliations, and health. (See also Article 3.)

2.3.11 Graduate students and faculty members share the responsibility for maintaining professional relationships based on mutual trust and civility.

2.3.12 The graduate student has a right to be protected from personal exploitation and to

receive recognition for scholarly assistance to faculty.

2.4 Academic Programming

2.4.1 The department/school or college is responsible for informing, in writing, all incoming graduate students of program requirements and procedures.

2.4.2 Guidance Committee. It shall be the responsibility of each graduate student admitted to a doctoral program or to a master's program that requires a guidance committee, to form a guidance committee with the concurrence of the unit chairperson/director or designated representative. Composition of the guidance committee will be in accord with University, college, and department/school guidelines. In the event that a student is unable to form a guidance committee, it shall be the responsibility of the unit chairperson/director to intervene with the faculty of the unit to resolve the problem.

2.4.2.1 For graduate students in doctoral programs the guidance committee shall be formed within the first two semesters of doctoral study, or within two semesters beyond the master's degree or its equivalent. Within one semester after the committee is formed, the chairperson of the guidance committee shall file a guidance

committee report with the dean of the college, listing all degree requirements. A copy of this guidance committee report shall also be given to the graduate student. This guidance committee report, as changed or amended in full consultation between the graduate student and the committee and as approved by the appropriate department chairperson or school director and the dean of the college, shall be regarded as the statement of program requirements. The program will not be considered binding unless signed by the student.

Exhibit A-7

[p. 65]

2.4.2.2 Once designated, the guidance committee has the responsibility to meet periodically to oversee the graduate student's progress as long as the graduate student continues in good standing. Any desired or required changes in the membership of the guidance committee may be made by the graduate student with the concurrence of the unit chairperson/director or designated representative or by the unit with the concurrence of the graduate student in accordance with University, college, and unit policy. The guidance committee, with the concurrence of the graduate student, may form a thesis/dissertation committee to supersede or supplement the guidance committee. Committee or thesis/dissertation chairpersons on leave shall provide for the necessary guidance of their advisees during their absence.

2.4.3 Residency. Academic residency requirements and residency fee policies shall be made known to the graduate student at the time of admission.

2.4.4 Time Limits. The time limitations for candidates seeking advanced degrees shall be made known to the graduate student at the time of first enrollment. Application for extension shall be submitted to the department/school and transmitted for approval by the dean of the college.

2.4.5 Program Changes. Each department/school or college shall establish procedures for altering individual student programs that have been approved in accordance with the provisions of Section 2.4.2.1. Graduate students shall be involved in developing such procedures. (See also Section 6.1.1)

2.4.6 Dissertation and Thesis. The nature and scope of the doctoral dissertation and master's thesis (or its equivalent) shall be defined by the department/school or college and the guidance or dissertation committee according to the professional and scholarly research standards of the discipline. The department/school or college shall specify in advance the acceptable style and form of the dissertation or thesis in accordance with *The Graduate School Guide to the Preparation of Master's Theses and Doctoral Dissertations*.

2.4.6.1 Standards for formatting, duplicating and binding of dissertations and theses, as well as the stipulations covering abstracts, numbers of copies, dates and deadlines for acceptance, and regulations for microfilming and publication shall be established and published by The Graduate School.

2.4.7 Code of Professional Standards. . Each department/school and college shall communicate in writing to its graduate students, at the time of their first enrollment in a degree program or in a course in the unit, any specific codes of professional and academic standards covering the conduct expected of them.

2.4.8 Evaluation. Graduate students have a right to periodic evaluations to assess their academic progress, performance, and professional potential. Evaluation of graduate students shall be made only by persons who are qualified to make that evaluation. Written descriptions of unit/program methods of evaluation and the general rationale employed shall be provided to graduate students and the faculty. Written evaluations shall be communicated to the graduate student at least once a year, and a copy of such

evaluations shall be placed in the graduate student's file. (See also Section 2.5.2.4)

2.4.8.1 When determination is made that a graduate student's progress or performance is unsatisfactory, the student shall be notified in writing in a timely manner, and a copy of the notice shall be placed in the graduate student's academic file.

2.4.8.2 When a graduate student's status in a program has been determined to be in jeopardy, the graduate student shall be informed in writing in a timely manner, and a copy of the notice shall be placed in the student's academic file.

2.4.9 Dismissals and Withdrawals. Each department/school and college shall establish criteria for the dismissal or withdrawal of graduate students enrolled in its programs. Such criteria shall be published and given to graduate students at the time they begin their programs. Should a decision to dismiss a graduate student be made, the affected student shall be notified in writing in a timely manner. All information regarding the decision is to be held in strict confidence between the student and those faculty and administrators with responsibility for the

student on a need to know basis; release may be only with the written consent of the graduate student involved unless the decision becomes the substance for a grievance procedure, in which case such information shall be released to the grievance committee. All records and information created under this article shall be released only in accordance with the University's published policies governing privacy and release of student records. The same privacy is to be accorded the reasons for a graduate student's temporary or permanent withdrawal from the University. Should a decision to dismiss be held in abeyance, pending completion of the stipulated conditions, these conditions must be communicated in writing in a timely manner to the student.

2.5 Educational Training of Graduate Students in Teaching Roles

2.5.1 Colleges and departments/schools are responsible for establishing orientation and in-service training programs for all graduate students in teaching roles. Such programs shall include an introduction to course goals, grading criteria and practice, and classroom procedures as well as periodic class-

Exhibit A-8

[p. 66]

room visitation. The graduate student in a teaching role is held responsible for full and active participation in all such programs.

2.5.2 Graduate students who are involved in teaching roles are expected to fulfill effectively their assigned responsibilities at a high level of performance. To gain feedback for monitoring and increasing their teaching effectiveness, such graduate students shall use, where applicable, confidential instructional rating reports in each course that they teach. These reports shall be submitted to the unit in accordance with the stated policy of the Academic Council.

2.5.2.1 The coordinator of each course staffed by graduate students in teaching roles shall submit each semester to the unit administrator or to the appropriate unit committee a formal written evaluation of each of the graduate students in teaching roles. After notifying the graduate student, appropriate members of the department/school should visit and observe the student's teaching in the instructional

setting, and information from these visits and observations should be used in the evaluation.

2.5.2.2 The graduate student instructional rating reports (or summaries thereof), formal written evaluations, and any supplementary information shall be placed in a confidential file for use by the student and by faculty members in accordance with 2.5.2.3. This material shall remain on active file until the graduate student's teaching role is terminated, after which a copy of the file becomes the graduate student's personal property upon request. If evaluations or summaries of them are kept beyond the student's tenure at the University, these records should be altered so as to be anonymous.

2.5.2.3 Evaluation material described in 2.5.2.2 may be used in overall evaluations and in determining such matters as renewal of assistantships, teaching assignments, recommendations, and the need for further training.

2.5.2.4 An evaluation of teaching shall be given to the graduate student

who has a teaching role at least once each year. (See also 2.4.8)

ARTICLE 3
STUDENT RECORDS AT MICHIGAN STATE UNIVERSITY

3.1 Achieving educational goals, providing direction to graduate students, and extending service to society demand that the University keep records. All policies and practices concerning records shall be based on respect for the privacy of the individual graduate student as well as current federal and state law.

3.1.1 Because of respect for the privacy of the individual graduate student, record keeping must be performed only by university personnel whose job responsibilities require record keeping.

3.2 All policies and practices governing access, maintenance, and release of graduate student records shall conform to the University's published guidelines.

3.2.1 No record shall be made, duplicated or retained unless there is a demonstrable need for it which is reasonably related to the basic purposes and necessities of the University.

3.2.2 The University shall not make, duplicate, or retain records of a graduate student's religious or political beliefs without the graduate student's knowledge and consent.

3.2.3 Graduate students shall have the right to inspect any of their own educational records, barring confidential letters of recommendation, including their official transcript. Students also shall have the right to inspect reports and evaluations of his or her academic performance.

3.2.4 All policies and practices dealing with the acquisition and dissemination of information in student records shall be formulated with due regard for the graduate student's right of privacy and access.

3.2.5 All graduate student educational records shall include a notation of the name of the person who supplied the information and the date of its entry, with the exception of central Student Information System records.

3.2.6 Confidential records shall be responsibly handled. Units shall train persons handling such records in appropriate methods of keeping confidential records.

3.2.7 No one outside the faculty or administrative staff of Michigan State University, except as specified by law, may have access to the record of a graduate student's offenses against University regulations without the written permission of the student.

3.2.8 All policies governing the maintenance and the selective release of records and of portions of records shall be made public in an appropriate

manner and shall be subject to judicial review as provided in Article 5.

3.2.8.1 These policies and practices shall conform to current federal and state law. In addition, any changes to the policies shall be made known to the graduate student body through the all-university graduate student governing body.

Exhibit A-9

[p. 67]

ARTICLE 4
GRADUATE STUDENT SUPPORT

4.1 Classes of Support

4.1.1 Students receiving support through the University fall primarily into three classes:
a. graduate assistants
b. University employees
c. fellowship, scholarships and/or grant recipients

4.2 Graduate Assistants

4.2.1 Graduate assistants are graduate students currently enrolled in degree programs who are appointed through established University procedures and according to University policy governing graduate assistantships. Duties assigned to graduate assistants may include (but not be limited to) classroom instruction, student advising, writing supervision, reading of papers and examinations, and research. The responsibilities delegated to a graduate assistant must be performed under the supervision of an appropriate faculty member or administrator.

4.2.2 With the participation of graduate student representatives, each unit appointing graduate assistants shall develop policies and make available

current information covering, but not limited to, the following:

a. criteria for selecting new graduate assistants
b. criteria for renewing and/or continuing graduate assistantships
c. stipends (see 4.2.4)
d. stipend advancement and promotion
e. tax status of stipends (according to IRS policy)
f. procedures for evaluating performance (see also 2.5.2–2.5.2.4)
g. length of term of appointment, including continuance and renewal of graduate assistantships
h. work load, duties, and vacation schedules
i. grievance procedures

4.2.3 By April 15th of each calendar year, units shall advise each graduate assistant in writing of one (or more) of the following: (a) that the assistantship will be renewed for the following academic year or a portion thereof; (b) that the assistantship will be renewed provided the assistant is able to meet certain specified conditions; (c) that the assistantship will be renewed provided the unit is able to meet certain specified conditions; ;(d) that the assistantship will not be renewed for the following academic year. If the assistantship is not renewed, the reasons shall be indicated. When citing (c) above, the unit shall include the date the student will be notified about its decision to renew the assistantship for the appropriate semester(s). Evaluative judgments about students should be communicated in accordance with guidelines in 2.4.8. See all Sections 2.5.2–2.5.2.4.)

4.2.4 The Office of the Provost shall establish a campus-wide policy for graduate assistant stipends, taking into account (a) the amount of stipend adequate in relation to the current cost of living, (b) the need to be competitive with other universities, and (c) the availability of resources for graduate assistant stipends. (The Office of the Provost shall consult with the Dean of The Graduate School and the University Graduate Council on graduate assistant stipend levels.)

4.2.5 Graduate assistants are entitled to all benefits normally accorded to full-time graduate students, except as specified under policies established in accordance with 4.2.7.

4.2.6 All graduate assistants are entitled to such clerical-secretarial help and supplies as are commensurate with their assigned responsibilities and the resources of the unit.

4.2.7 The Office of the Provost and the Office of the Vice President for Finance and Operations, in consultation with the Dean of The Graduate School and the University Graduate Council and other appropriate, duly authorized authorities, shall review and publish policies for graduate assistants relating to (a) sick leave, (b) parking privileges, (c) bus privileges, (d) travel off campus, (e) insurance, (f) health care and (g) tuition waivers

4.2.8 Within the constraints of their training, experience and responsibilities, graduate assistants have a

right to the same professional respect as that accorded to regular faculty.

4.3 University-Employed Graduate Students

4.3.1 The University's student employment office shall publish annually minimum and maximum salaries and hourly wages for University-employed graduate students. This office shall have the authority to approve unit requests for all payments above the established maximums.

4.3.2 The University shall not deny a regular employee's fringe benefit solely because the person also is registered as a student.

4.3.3 University employees who are pursuing graduate study are bound by collective bargaining agreements or other applicable University personnel policies and agreements.

4.3.4 Employment-related grievances of graduate students employed in non-academic positions should be filed with the employing units under their respective procedures.

4.4 Fellowship, Scholarship and Grant Recipients

4.4.1 A graduate student supported by a fellowship, scholarship, and/or grant shall have a right to such information as (a) the responsibilities and performance required for retention of support, (b) the privileges and status associated with support, and (c) grievance procedures.

Exhibit A-10

[p. 68]

4.5 University Policies Relating to Graduate Student Support Recipients

4.5.1 Michigan State University and all of its units are Affirmative Action/Equal Opportunity Employers. Therefore, (a) discrimination on the basis of race, color, gender, national origin, political persuasion, sexual orientation, marital status, disability, age, religion, height, weight genetic information, or family status is expressly prohibited; (b) employment appointment policies shall be consistent with anti-discrimination policies of Michigan State University.

4.5.2 Graduate students shall be informed of all employment policies when a position is tendered.

4.5.3 The University retains the right to demote, suspend, terminate or otherwise discipline graduate students receiving support through the University for cause and for failure to meet their responsibilities. The University also retains the right to terminate a graduate student's participation in an academic program, which in turn may terminate the graduate student's assistantship or other support. Graduate students who believe they have a grievance under this article may utilize the judicial procedures outlined in Article 5.

4.5.3.1 In cases where the graduate student contends that the action of the University may cause irreparable harm, the graduate student may appeal to the appropriate judiciary for an expedited hearing.

ARTICLE 5
ADJUDICATION OF CASES INVOLVING GRADUATE STUDENT RIGHTS AND RESPONSIBILITIES

5.1 Judicial Structure

5.1.1 To promote effective functioning of the system of graduate student rights and responsibilities, an appropriate judicial structure and process shall be established for hearing and adjudicating all cases brought by and against graduate students in the following areas:

a. Academic Rights and Responsibilities
b. Professional Rights and Duties of Graduate Assistants not covered by the Graduate Employees Union collective bargaining contract
c. Professional Rights and Duties of other Graduate Students

5.1.2 Department/School Level. Adjudication necessitated on the department/school level may be handled informally or, at the request of a party or parties, formally through a department/school hearing board. The hearing board shall be composed of the unit administrator or designee and equal numbers of faculty and graduate

students selected by their respective groups in accordance with the department/school bylaws. If the unit administrator is involved in the case, neither the unit administrator nor the designee may serve on the hearing board.

5.1.3 College Graduate Hearing Board. Each college shall establish a judiciary composed of the chair of the college graduate committee or designee and equal numbers of faculty and graduate students selected by their respective groups in accordance with college bylaws.

5.1.4 University Graduate Judiciary. A judiciary shall be established at the University level composed of the Dean of The Graduate School or designee, who shall serve as chairperson, three elected faculty members of the University Graduate Council, and three graduate students chosen by the All-University Graduate Student Governing Body.

5.1.5 Each hearing board or judiciary shall be chaired by a member who has faculty rank and shall provide a suitable number of alternate members chosen in accordance with the procedures established above.

5.1.6 Term of Office. Hearing board or judiciary members at all levels shall be selected in the fall of the year and shall serve one year. The one-year term shall not preclude reappointment of any member the following year.

5.1.7 Members of a judiciary involved or possessing other conflicts of interest in a case at issue shall be

disqualified from sitting on the judiciary for that specific case.

a. An approved alternate member from the appropriate faculty or student group will replace such person(s) in accordance with established guidelines.
b. Either party (complainant or respondent) may submit to the chair of the hearing board a challenge of judiciary members in instances of alleged conflicts or interest. Such challenges will be arbitrated by the chair in a timely manner and reported to both parties in writing three (3) class days after rendering a decision.
c. Either party may remove a total of two board members, barring the chair, without stated cause. The name(s) of the individual(s) must be transmitted to the chair no later than three (3) days after receiving notification of the board's membership.

5.2 Jurisdiction of Alleged Violations (other than grievances).

5.2.1 Except as specified in this document (particularly in Section 5.1), alleged violations of student group regulations, general student regulations or all-University policies as they apply to all students (undergraduate, graduate, graduate-professional) will be referred to the appropriate judiciary as outlined in the *Academic Freedom for Students at Michigan State University*.

Exhibit A-11

[p. 69]

5.3 Redress of Grievances

5.3.1 With respect to allegations of violation(s) by or against a graduate student in the areas cited in Section 5.1, where possible, a grievant is encouraged to seek resolution and redress informally with the appropriate individual(s).

5.3.2 If problems arise in the relationship between instructor and student, both should attempt to resolve them in informal, direct discussions. If the problem remains unresolved, then the unit administrator and/or the Ombudsman should be consulted. If still aggrieved, a student may then submit a formal, written grievance for consideration by an appropriate hearing board. The formal grievance alleging violations of academic rights must include a proposed remedy which could be implemented by a responsible administrator.

5.3.3 The University undertakes, within the limits of its resources and the limits imposed by due respect for the professional rights of the faculty, to supply an appropriate remedy for legitimate student grievances that have judicial merit. (See Article 5.4.6). The limits of the University's resources proceed from factors that, while subject to its influence, are not always subject to its control.

5.3.4 To overcome the presumption of good faith in course instructors' and graduate committees' judgments of performance, grievances concerning academic evaluations must demonstrate that an evaluation was based entirely or in part upon factors that are inappropriate or irrelevant to academic performance and applicable professional standards. (See Sections 2.2 as well as 2.3.11 and 2.4.8.)

5.3.5 Any member of the academic community of Michigan State University may initiate a grievance involving the rights and responsibilities of graduate students. Grievances alleging violation of the academic rights of an undergraduate student by a graduate student shall be heard by the unit level judiciaries outlined in the *Academic Freedom for Students at Michigan State University*.

5.3.6 In submitting a formal grievance to an appropriate hearing board (see Section 5.3.6.2) alleging violation(s) by or against a graduate student in the areas cited in Section 5.1, a grievant must submit a written, signed statement that specifies in sufficient particularity to justify proceedings the point(s) forming the basis of the grievance, the person(s) and/or unit(s) against whom/which the grievance is filed, and the redress that is sought.

5.3.6.1 Grievances must normally be initiated no later than mid-term of the semester following the one wherein the alleged violation occurred (exclusive of summer semester). If the involved instructor or student is absent from the

University during that semester, or if other appropriate reasons exist, an exception to this provision may be granted by the appropriate Hearing Board. If, before the formal grievance procedures are completed, the involved instructor is no longer employed by the University, the grievance process may nevertheless proceed.

5.3.6.2 Student grievances alleging violation of academic and professional rights must be initiated at the lowest administrative level feasible; normally, the department/school. With the approval of the college dean, departments/schools may waive jurisdiction and refer grievances to the college hearing board.

5.4 Judicial Procedures

5.4.1 Departments/schools and colleges shall establish hearing board procedures in a manner consistent with this document. A copy of these procedures shall be filed with the Ombudsman and with the Dean of the Graduate School. Departments/schools and colleges shall review their hearing board procedures every five (5) years.

5.4.2 Procedures for the adjudication of grievances must proceed in a timely manner as defined below.

5.4.3 Upon receipt of a request for a formal grievance, the unit chair/director shall forward a copy of the grievance request within ten (10) class days to the hearing board members and to the person or persons party to the matter.

5.4.4 In urgent cases in which it is alleged that a regulation, administrative decision or action threatens immediate and irreparable damage to any of the parties involved, the hearing board or judiciary shall expedite the hearing and final disposition of the case.

5.4.5 A hearing board or judiciary is empowered to act on a request to direct an individual or unit to discontinue or postpone an administrative decision or action that threatens immediate and irreparable damage to any of the parties involved pending final disposition of the case. The hearing board or judiciary shall expedite the hearing and final disposition of this urgent case.

5.4.6 A department/school or college hearing board shall review each hearing request for jurisdiction and judicial merit and may then forward a copy of the request to the appropriate individual(s) and invite a written response. After considering all submitted information, the board may:

a. Accept the request, in full or in part, and proceed to schedule a hearing.
b. Reject the request and provide an appropriate explanation.
c. Invite all parties to meet with the board for an informal discussion of the issues. Such a discussion shall not preclude a later hearing.

5.4.7 Notice of Hearing. At least six (6) class days prior to a formal hearing, both the respondent and the complainant shall be entitled to a written notification of hearing from the appropriate hear-

Exhibit A-12

[p. 70]

ing body. This notice of hearing shall state:

a. The nature of the issues, charges and/or conflicts to be heard with sufficient particularity to enable both the respondent and the complainant to prepare their respective cases.
b. The time and place of the hearing.
c. The body adjudicating the case and the names of the members that make up the body, including the names of all alternate members.
d. The names of the respondent and complainant.
e. The name(s) of any potential witnesses.
f The name of an advisor (if any) selected by the complainant or respondent.

5.4.8 Either the complainant or the respondent may request, with cause, a postponement prior to the scheduled time of a hearing. The hearing board may grant or deny such a request.

5.4.9 Both the respondent and the complainant shall be expected to appear at the hearing and present their cases to the judiciary.

a. Should the complainant fail to appear, the judiciary may either postpone the hearing or dismiss the case.
b. Should the respondent fail to appear, the judiciary may either postpone the hearing or, only in unusual circumstances, hear the case in his or her absence.

c. The judiciary may accept written statements from a party to the hearing in lieu of a personal appearance, but only in unusual circumstances. Such written statements must be submitted to the judiciary at least one (1) day prior to the scheduled hearing.

5.4.10 Hearing boards shall ensure that a collegial atmosphere prevails in grievance hearings. Either party shall have the right to be accompanied by an advisor (see definition in Article 8). Permission will be granted to the respondent to be accompanied by an attorney if there are criminal charges pending. If the respondent is charged with a sex offense, the complainant may also have an attorney present.

5.4.10.1 During the hearing, parties to a grievance shall have an opportunity to state their cases, present evidence, designate witnesses, ask questions, and present a rebuttal.

5.4.11 The hearing board shall prepare a written report of findings and rationale for the decision and shall forward copies to the parties involved, to the responsible administrator(s), to the Ombudsman, and to the Dean of The Graduate School. The report shall indicate the major elements of evidence, or lack thereof, which support the hearing board's decision. All recipients are expected to respect the confidentiality of this report. When a hearing board finds that a violation of academic rights has occurred and that redress is possible, it shall direct the responsible administrator to provide redress. The

administrator, in consultation with the hearing board, shall implement an appropriate remedy.

5.4.12 Appeals. The decision of the original hearing board may be appealed by either party to a grievance only to the next level hearing board. If the original hearing was by a department/school hearing board, the appeal shall be made to the college hearing board. If the original hearing was by a college hearing board, the appeal should be made to the University Graduate Judiciary.

5.4.12.1 Appeals must allege either that applicable procedures for adjudicating the case were not followed in the previous hearing or that the findings of the hearing board were not supported by the preponderance of the evidence. (Presentation of new evidence will normally be inappropriate at an appeal hearing.)

5.4.12.2 All appeals must be written and signed and must specify the alleged defects in the previous adjudication(s) in sufficient particularity to justify further proceedings. The appeal must also specify the redress that is sought.

5.4.12.3 Appeals must be filed within ten (10) class days following a notice of a decision. The original decision shall be held in abeyance while under appeal.

5.4.12.4 An appellate board (i.e., a college hearing board or the University Graduate Judiciary) shall review each appeal request and may then forward a copy of the request to the appropriate

individual(s) and invite a written response. After considering all submitted information, the appellate board may:

a. decide that sufficient reasons for an appeal do not exist and that the decision of the lower hearing body shall stand;
b. direct the lower hearing body to rehear the case or to reconsider or clarify its decision; or
c. decide that sufficient reasons exist for an appeal and accept the request, in full or in part, and proceed to schedule an appeal hearing.

5.4.12.4.1 Following an appeal hearing, an appellate board may affirm, reverse, or modify the decision of the lower hearing body.

5.4.13 Reconsideration. Each judiciary or hearing board shall make provision to allow the parties to a grievance to request reconsideration of a case within sixty (60) days if it is determined that new evidence has arisen. An exception to the time provision may be granted by the appropriate judiciary or hearing board.

5.5 Academic Dismissal and Academic Disciplinary

Exhibit A-13

[p. 71]

5.5.1 A student who receives a penalty grade based upon a charge of academic dishonesty and who is not referred for judicial action may seek a hearing from a department/school hearing board. In such a hearing, the burden of proof shall rest upon the instructor whose prior assignment of the penalty grade will constitute a charge of academic dishonesty. The college hearing board shall proceed in compliance with applicable University and/or unit academic legislation on the integrity of scholarship, grades, and professional standards; and the procedural and appeal provisions of this document shall apply.

5.5.1.1 After hearing a disciplinary case involving academic dismissal, dishonesty, professional standards, or falsification of admission or academic records, the college hearing board shall decide whether action is supported by the preponderance of evidence. If the finding is that disciplinary action is not warranted, the graduate student may challenge a penalty grade received in the case through the department/school and college hearing boards. If disciplinary action in addition to any penalty grade which has been assessed is supported by the preponderance of evidence, the hearing board may select from the following sanctions:

a. Sanctions in academic disciplinary cases:
   1. Warning. An official written statement expressing disapproval of acts committed.
   2. Warning Probation. A probation indicating that further violations of regulations will result in more severe disciplinary action. This probation will be imposed for a specific period of time; and provided no further violations have occurred, the graduate student shall be automatically removed from probation when the imposed period expires. This probation may be accompanied by a requirement that restitution be made for University property damages or losses resulting from acts committed, or other requirements or special conditions as deemed appropriate.
   3. Disciplinary Probation. A period of time specified for observing and evaluating a graduate student's conduct, with or without special conditions, including a written reprimand, and indicating that (a) further violations while on probation may result in more

severe disciplinary action including suspension, or (b) further violation while on probation of regulations of similar or greater severity will result in suspension. This probation will be imposed for a specific period of time; and, provided no further violations have occurred, the graduate student shall automatically be removed from probation when the imposed period expires.

4. Suspension. A suspension from the University may be for a specified period of time, in which case the graduate student is eligible to apply for readmission at the end of the stated period of time; or it may be a conditional suspension, in which case the graduate student must demonstrate that he/she has fulfilled stated conditions prior to applying for readmission. A recommendation of suspension must be reviewed by the Dean of The Graduate School and the Provost who may affirm the decision or direct other appropriate redress in consultation with the hearing body.

5. Other: Other action deemed appropriate to a specific case.

b. Sanctions in academic dismissal cases:

1. Academic dismissal does not imply future readmission, nor does it mean that the person is forever barred from enrollment at Michigan State University. After a period of at least a year, and usually a minimum of two years, a student dismissed for academic reasons may apply for readmission. The applicant must be prepared to submit evidence indicative of capacity to perform graduate level work. Declarations of good intentions are not sufficient. Each application will be considered on its merits. If the student has attended another institution while on dismissal, an official transcript must be submitted.

5.5.2 When sanctions other than or in addition to a penalty grade are involved, the college hearing board has original jurisdiction, and the University Graduate Judiciary has appellate juris-

Exhibit A-14

[p. 72]

diction over academic dismissals and disciplinary cases against graduate students relating to academic dishonesty, violations of professional standards, or falsification of admissions or academic records.

5.6 The University Graduate Judiciary is the final hearing body within the judicial structure related to graduate academic rights and responsibilities, in cases which are initiated at the college level.

5.6.1 The University Graduate Judiciary shall have available to it the full range of decisions provided to hearing boards through this document. In addition, the University Graduate Judiciary may make whatever recommendations it may consider appropriate to specific cases. When the Judiciary finds that a violation of academic rights has occurred and that redress is possible, the Judiciary shall direct the responsible administrator to provide redress. The administrator, in consultation with the University Graduate Judiciary, shall implement an appropriate remedy.

ARTICLE 6
ACADEMIC GOVERNANCE

6.1 Graduate students shall participate in academic governance at the department/school, college, and University levels.

6.1.1 At the department/school level, graduate student participation in the policy-making process shall include, but not necessarily be limited to, the following:
Graduate curriculum and degree requirements.
Graduate financial aids and awards.
Graduate admissions criteria.

6.1.1.1 Graduate student representatives shall participate as voting members on departmental/school committees relating to the policy-making process.

6.1.2 Graduate student representatives shall participate as voting members on all policy-making committees at the departmental/school and college levels that are directly concerned with graduate student affairs.

6.1.2.1 The department/school advisory committees, or their equivalent, in consultation with graduate student representatives in the unit, shall determine which unit-level committees are directly concerned with graduate student affairs.

6.1.2.2 Each department/school and college shall inform its graduate students in a timely manner of the committee positions that graduate students may hold, the duties and lengths of appointment of said position, the process by which individuals are selected for

appointment, and the names of the appointed representatives.

6.1.3 At the University level, graduate students shall be selected and shall have voting membership on the University Graduate Council, Academic Council and other such committees as specified by the *Bylaws for Academic Governance*.

ARTICLE 7
PROCEDURE FOR AMENDING AND REVISING THIS DOCUMENT

7.1 Any member of the Michigan State University community may initiate a proposal to amend or revise this document.

7.1.1 A graduate student shall submit a proposal to the all-University graduate student governing body for approval. The all-University graduate student governing body may approve the proposal by a majority vote of the members present. If approved, the proposal, with recommendation for its adoption, shall be submitted to the University Graduate Council through the all-University graduate student governing body's regular representatives.

7.1.2 A faculty member shall submit a proposal to the colleges Graduate Committee for its approval. The college Graduate Committee may approve the proposal by a majority vote of the members present. If approved, the proposal, with a recommendation for its adoption, shall be submitted to the University

Graduate Council through the college's regular representative(s).

7.1.3 Any other member of the Michigan State University community (not a graduate student or a regular faculty member) may submit a proposal to The Graduate School for transmission to the University Graduate Council.

7.2 All proposals to amend or revise this document must be approved by both the all-University graduate student governing body and the University Graduate Council by a majority vote of the members present.

7.3 If approved by the University Graduate Council and by the all-University graduate student governing body, the proposal, with recommendations for its approval, shall be submitted to the Academic Council.

7.4 The Academic Council shall review all amendments and revisions and either approve or reject them in accordance with the *Bylaws for Academic Governance*. A proposed amendment or revision that is rejected by the Academic Council shall be returned to the University Graduate Council and to the all-University graduate student governing body along with a written explanation for the rejection. This explanation may include suggestions for alteration of the proposal. A proposed amendment or revision that is approved by the Academic Council shall be forwarded to the President who shall

Exhibit A-15

[p. 73]

present it to the Board of Trustees according to existing practices of Academic Council for such transmittal.

7.5 The Board of Trustees shall review all amendments and revisions and may approve the proposal, at which time it shall become operative, or reject the proposal and return it to the Academic Council with an explanation.

7.6 The University community shall be promptly informed of all action taken on proposed amendments and revisions.

ARTICLE 8
DEFINITIONS

8.1 Various terms appearing in other articles of this document are defined below.

8.1.1 Academic Disciplinary Case: A case brought against a graduate student accused of academic dishonesty, violation(s) of professional standards, or falsification of admission or academic records (involving sanctions other than or in addition to a penalty grade).

8.1.2 Academic Dishonesty: Refer to General Student Regulation 1.00, Scholarship and Grades.

8.1.3 Administrators: Persons employed, either regular or temporary, full or part time, who manage budgets, direct work units or formulate, evaluate, and/or administer University policy.

8.1.4 Advisor: A member of the student body, faculty, or staff of the University chosen by either the complainant or the respondent to assist in the preparation or presentation of a case.

8.1.5 All-University Graduate Student Governing Body: Council of Graduate Students (COGS

8.1.6 Class Day: A day on which classes are held, including a day during Final Exam Week.

8.1.7 Complainant: A member of the University community who initiates judicial proceedings.

8.1.8 Faculty: All persons appointed by the University, either regular or temporary, either under the rules of tenure or not, holding the rank of professor, associate professor, assistant professor, or instructor, persons appointed as librarians, or other persons with approved titles in the academic personnel system whose duties involve instructional activities.

8.1.8.1 Regular Faculty: All persons appointed under the rules of tenure and holding the rank of professor, associate professor, assistant professor, or instructor, and persons appointed as librarians. In

addition, the principal administrative officer of each major educational and research unit of the University shall be a member of the "regular faculty."

8.1.9 Falsification of Admission or Academic Records: Refer to General Student Regulation 5.00, Protection of University Functions and Services, as it applies to records that are created and/or effectively maintained by the Office of the Registrar, the Office of Admissions and Scholarships, or academic units, (e.g. colleges, departments, and schools).

8.1.10 Graduate Student: A graduate student enrolled in a master's, doctoral or educational specialist program. Those students who are enrolled in graduate non-degree programs shall be deemed graduate students.

8.1.11 Graduate-Professional (Medical) Student: A graduate student enrolled in a medical degree program in the College of Human Medicine, College of Osteopathic Medicine, or College of Veterinary Medicine. Those students who are enrolled in graduate-professional non-degree programs shall be deemed graduate-professional students.

8.1.12 Hearing Body: A duly constituted judiciary as outlined in Section 5 above.

8.1.13 Non-Academic Disciplinary Case: A case brought against a student respondent accused of violating a regulation or all-University policy. Such a case is heard under Section 4.3 of the *Academic Freedom for Students at Michigan State University* document. If the allegations are upheld, the respondent is subject to disciplinary sanctions as defined in Section 4.2.4b of that document.

8.1.14 Ombudsman: The university ombudsman is a senior faculty member who assists members of the MSU community in resolving complaints or concerns confidentially, informally, impartially, and independently.

8.1.15 Penalty Grade: A grade assigned to a student by a faculty member based on a charge of academic dishonesty.

8.1.16 Preponderance of the Evidence: That which is more convincing, more credible, and of greater weight. In disciplinary cases, a preponderance of evidence must overcome an appropriate presumption of innocence.

8.1.17 Professional Standards: Any codes of expected professional conduct must be approved by the academic units, the dean, and, in the case of college statements, the Office of the Provost. The procedure for the approval by the academic units should include student participation in accordance with Article 6. The dean and the Office of the Provost shall consult with appropriate governance groups

before taking action. These codes are to be provided to students at the time of their enrollment in the program or in a course in the unit.

8.1.18 Respondent: An individual, formal and informal groups, recognized and unrecognized groups, or unit from the University community alleged to be responsible for a situation or conflict or for violation of a regulation or policy.

8.1.19 Staff: Employees of the University other than those specifically defined in this article.

8.1.20 Student: An individual is considered a student

Exhibit A-16

[p. 74]

from the time of admission to Michigan State University until graduation, recess, dismissal, suspension, or withdrawal from the University, or non-registration for more than one consecutive term.

8.1.21 Undergraduate: A student enrolled in a bachelor's degree. Those students enrolled in undergraduate non-degree programs shall be deemed undergraduate students.

8.1.22 University Community: All persons who are students, trustees, administrators, faculty, or staff.

HISTORY OF APPROVAL
ORIGINAL DOCUMENT

Academic Council	May 19, 1971
Board of Trustees	June 18, 1971

COMPLETE REVISION

University Graduate Council/COGS	January 16, 1984
Academic Council	February 28, 1984
Board of Trustees	July 27, 1984
Revision effective	July 27, 1984

COMPLETE REVISION

University Graduate Council	November 4, 2002
Council of Graduate Students	November 17, 2002
Academic Council	February 25, 2003
Board of Trustees	April 11, 2003
Revision effective	April 11, 2003

MSSR
Medical Student Rights and
Responsibilities

The *Medical Student Rights and Responsibilities*, was approved by the MSU Board of Trustees on June 6, 1986. This document applies to medical students enrolled in the College of Human Medicine, the College of Osteopathic Medicine, and the College of Veterinary Medicine. The MSRR closely parallels the *Graduate Student Rights and Responsibilities*, but contains provisions designed for the special circumstances of medical students.

Copies of the MSRR are available in the offices of the Deans of the Medical Colleges, the Graduate School, the Office of the Provost, the Office of the Ombudsman, and in 162 Student Services. The document is also printed in the *Graduate Student Handbook* published by the Council of Graduate Students.

Exhibit B

MICHIGAN STATE UNIVERSITY

COLLEGE OF EDUCATION

Associate Dean
External Relations and Student Affairs

Michigan State University
518 Erickson Hall
East Lansing, Michigan
48824-1034

517/355-1787
FAX: 517/353-6393

August 13, 2001

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910

Dear Mr. Xu:

I have reviewed my correspondence with you over the last five months and find that you have not responded to the opportunity to obtain assistance in clarifying your proposed grievance so that your claim of violation of your rights as a graduate student can be heard by a college panel. Since you have not responded to my email of June 5, 2001 nor my letter of July 3, 2001, I will consider this matter closed.

Sincerely,

/s/ _____
Cassandra Book
Associate Dean

Cc: Carole Ames
Richard Prawat
Ken Frank
Betsy Becker
Stan Soffin
David Wright

Exhibit C

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910
(517) 887-7357
Xujiqian@pilot.msu.edu
Aug. 28, 2001

College of Education
Michigan State University
E. Lansing, MI 48824

Dean Cassandra Book:

I have received your email and recent letters. Thanks for your kind work.

In your letter of August 13, 2001, you made a statement that you "will consider this matter closed" because of my not timely response to you. I think that your complaint might be unnecessary if you realize how many times and how long Drs. Becker and Reckase delayed to make responses to me when they were working with the case for the department of CEPSE.

If your statement is decisive, I understand and accept. Then I am not satisfied with your conclusion, and will send my letter of grievance directly to Michigan State University, the higher one above the college level by school rules.

This letter comes to you in e-version only. If you need a written copy, please let me know and I will be happy to send one to you. Thank you very much.

Sincerely,

JiQiang Xu

Exhibit D-1

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910
(517) 887-7357
Xujiqian@pilot.msu.edu
March 19, 2002

Michigan State University
E. Lansing, MI 48824

Dear President Peter McPherson:

I am a former graduate student of Measurement and Quantitative Method (MQM) Ph.D. program, Department of Counseling, Educational Psychology and Special Education (CEPSE), College of Education (1994-1998). My student ID number was A10916880. My academic advisor was Dr. Ken Frank.

My dissertation was titled "Parameter Estimation and interpretation in Spatial Autoregression Models (SAM)." I have made contributions to SAM in both technical and theoretical aspects. Based on SAM, I have created a new measurement in statistics which makes sense especially in social science; I also generalized the classical "Factor Analysis" technique which is widely used in statistics. I think that my paper has its historical importance to SAM, in social sciences, and in statistics.

I write this letter to you for a clarification of the authorship confusion between my advisor Dr. Frank and me regarding my achievements in SAM. Since late 1996, Dr. Frank began his steps to take over my academic results. In our communication, Dr. Frank told me that "you have primarily responsible for the two technical insights", claimed

that "I believe I have made a considerable contribution to the work (of SAM)." He said that he will publish my paper "if you decided not to pursue an academic career", and our disagreement was "a mistake on your part." It was found that without my agreement, Dr. Frank was sending out my SAM work in his name to the public behind me after his rewriting. In reality, from early 1995 when I became his advisee until late 1998 when my dissertation was approved by the MSU Graduate School, Dr. Frank never made a single step, small or big, theoretical or technical moving ahead me in SAM.

Being my advisor, Dr. Frank restricted my communication to outside professionals in these years. Dr. Frank told me "Don't send paper to AERA", the national leading "American Educational Research Association", "Don't go to conference. People will laugh at you", and other similar words. Dr. Frank also did not allow me to communicate with a national leading scholar in my area via email directly. Our disagreement was spreading out in his way.

1. About Dr. Frank's second draft or the so-called "working paper".

The central item of the whole case was Dr. Frank's second draft which he later called as "working paper."

I came to the MQM program in Fall 1994 with Dr. Frank as my assigned advisor. In the

Exhibit D-2

beginning of 1995, I decided to have Dr. Frank as my dissertation advisor with a focus on SAM. In Fall 1996, my apprenticeship paper was passed and qualified to send out for publication as Dr. Frank agreed. Dr. Frank then told me that he would like to help in English writing and thus to be the second author of the paper. I agreed. Two months later in late 1996, Dr. Frank changed his words and said that he would like to add on his "new stuff" to my SAM work. By doing so, he told me that he would like to share an "equal authorship" with me. Confused by his vague words of "new stuff' and "equal authorship", I could not and did not make any positive responses to his suggestion.

Dr. Frank gave me a total of two pieces of drafts with points of his "new stuff". In January 1997, Dr. Frank gave me the first piece of his draft. That was a brief one based on my apprenticeship paper with two points of his "new stuff". I found both of his points were errors and he took it back reluctantly.

It was on March 13, 1997, eleven days before the yearly AERA conference, Dr. Frank gave me the second piece of his draft. Dr. Frank told me that he had added on one more point of his "new stuff." The second draft contained more details than the first one. It had a formal cover page with running heads and return address, and seemed ready for Dr. Frank to bring to the upcoming AERA conference. The cover page showed Dr. Frank's name up and my name down as a realization of his "equal authorship". I found that his new point was once again an error while his two old points remained. All three points of his "new stuff' were errors none of which was trivial. But by adding on those poor points to my SAM work as his "new stuff", Dr. Frank was ready to share an "equal authorship" with me just as the cover page

had said. I made an appointment with Dr. Frank for telling him my opinion.

In the meeting on March 21, 1997, three days before the AERA conference, I first obtained Dr. Frank's confirmation that he would not bring the second draft to the AERA conference. I told him in the meeting that his new point was an error. I asked Dr. Frank to remove my name from his draft. I told him that he might publish his work in his own name if he thought his "rewriting" itself was qualified for publication. I told him that he might use any parts of my results since they were all open to him, he needed only to put my name in the references. My rejection to his second draft made Dr. Frank unhappy, it also put myself under pressure. Our relationship was down for half of a year.

I had nothing to do when the relationship was down. Although I had passed the qualify examination in the beginning of 1997, I was not allowed to start writing my dissertation proposal. However, it was later found that during that period of time, Dr. Frank did bad thing behind me. Only after more than one year in August 1998, did I find by chance that in Dr. Frank's published 1997 article "Review of Research in Education (RRE)", there was a piece of "working paper" with author's name "Frank, K., & Xu, J. (1997)" in references. Dr. Frank later committed that this so-called "working paper" was actually his second draft. Against my will, Dr. Frank put my name on as a minor author to his second draft which I had clearly rejected in his face, and announced it a "working paper" written by "Frank, K., & Xu, J." to the public behind me when our relationship was down.

It was found that Dr. Frank was sending his second draft itself, not only a claim of its existence, to the public behind me. In late 1997 after I was allowed to start writing my proposal, there was calling for papers. I sent my SAM papers

to two leading international conferences one of which was at Barcelona, Spain, May 1998. Each of my SAM papers

Exhibit D-3

was single-authored, obtained Dr. Frank's approval before I sent to the conference. Both of my papers were accepted. Just by chance in our communication in May 1998, few weeks before my departure to Barcelona, it was found that Dr. Frank had sent his second draft in his name to Barcelona behind me. His name appeared as the second author of my paper at Barcelona although he had approved my single-authored paper to the conference already. I did not know in which way Dr. Frank convinced the Barcelona conference organizers to put his name to my single-authored paper without my agreement.

Dr. Frank's last effort came to me in September 1998 after I passed my dissertation defense. In a meeting on September 10, 1998, Dr. Frank started a new idea In SAM which was expressed in a formula of his own. The meeting started as an academic discussion, but ended in Dr. Frank's violent reaction. Because I told him that his idea was inappropriate, Dr. Frank lost his temper, threw papers to me and called me "idiot." I was strongly required to write his formula into my dissertation but I proved his formula a big error.

No matter what kind of reactions he ever made first, sooner or later, Dr. Frank finally agreed with me that his points and formula were wrong. I did not accept any of his "new stuff" for my own paper.

2. When the case was at the lower levels.

I reported the case to the Department of CEPSE in October, 1999 for a clarification of the authorship confusion between Dr. Frank and me regarding my SAM work. The Chairperson Dr. Richard Prawat referred the case to Dr. Becker and another faculty member, the two co-ordinates for the MQM unit within CEPSE to deal with. Since then, we got

about twenty letters and one informal meeting. I delivered a package with 73 pages from 29 copies to them. I sincerely appreciated the time and energy Dr. Becker and another faculty member contributed, but my questions regarding the authorship confusion were never answered.

I reported the case to the College of Education in January, 2001. We exchanged a limited number of mails. From Dean Carol Ames' selection, university level officer Dr. David Wright got involved in the case, claimed to help me but set a bad sample. This case was once deserved to a college level hearing board service but later closed because I had "not responded to the opportunity to obtain assistance" from Dr. Stan Soffin, another university level officer from Dean's selection.

3. My concern.

At the department level, Dr. Becker and another faculty member's opinion was expressed in the "summary of deliberation (January 2001)" which t received later. In my understanding, the whole summary was trying to legalize Dr. Frank's second draft or the "working paper", and to legalize Dr. Frank's action of "sending out" to the public behind me. There were neither supportive materials nor evidences to any of their beliefs or conclusions all the time. That was why we got totally no common agreement in this issue at the department level. What is more, Dr. Becker had a record of giving me a painful lesson after I reported to her that Dr. Frank made violent reaction against me in an academic discussion. When Dr. Becker, another faculty member and I were in a meeting on August 8, 2000, Dr. Becker was desperately lying to my face to cover a case-related

Exhibit D-4

fact after I reported that Dr. Frank was spreading our disagreement out in his way.

At the College level, two university level officers got involved in the case. Dr. Wright's action was unusual. He directly sent me an email calling for a meeting with a subject "confidential" even before Dean Ames' confirmation. In the meeting on March 1, 2001, after I reported that Dr. Frank sent the so-called "working paper" and the claim of the existence of the paper to the public behind me, Dr. Wright firmly claimed: "This is not serious since it's not official publications." After I requested about the "considerable contribution" Dr. Frank claimed that he made to my SAM work, I expected Dr. Wright to ask Dr. Frank telling the real contents of his contribution but Dr. Wright simply rejected: "I don't have the power." It was even shocking to me that Dr. Wright was treating me as a criminal in a moment. In the meeting, once heard that I had on hand evidences regarding the authorship confusion, Dr. Wright twice flatly commanded me "Give me (the evidences)!" Remember that Dr. Wright's official title was "Assistant Vice President for Research Ethics and Standards and University Intellectual Integrity Officer"; and Dean Ames had told me that he "has read all the materials" and "has been working on your case", how could Dr. Wright get the legal authority to command me to give him evidences which were in my possession?

In the very beginning of the meeting on March 1, 2001, Dr. Wright directly stated that "I come here to help you to get your Ph.D. degree rewarded." Dr. Wright continued in details: how important it was, how nice it would be once I was rewarded a Ph.D. degree. Dr. Wright emphasized that "People will call you Doctor Xu." For six or seven time in the whole meeting, Dr. Wright was starting and restarting his "degree rewarding" topic again and again in full details and

urging me to accept no matter how much I was denying his topic. It seemed to me that the "degree rewarding" issue was the only topic Dr. Wright initiatively wanted to talk with me. In my understanding, what Dr. Wright did was a purposeful misleading. Because of what I experienced, I can not trust Dr. Wright, the "Assistant Vice President for Research Ethics and Standards and University Intellectual Integrity Officer" of Michigan State University. I suspect Dr. Wright's qualification if you might possibly consider to assign him to deal with the case at the university level.

I expect that you would be aware of the fact that Dr. Stan Soffin, the MSU ombudsman, got virtually involved in the case when this case was at the college level.

4. My hope.

I have been grateful to Dr. Frank's suggestion of the dissertation topic. I appreciate all helps I received from my committee members including Dr. Becker. I also want to make it clear that all my achievements written in my dissertation were my intellectual property and I will protect it. I will not allow anyone to take it away in whichever ways.

Dr. Frank claimed directly to me that he had made "considerable contribution" to my SAM work, he also "sent out" his version of my paper to the public which meant that he had become a co-owner of my property, he has to be responsible to his words and action. He must tell clearly what part of my SAM paper he was going to share with me.

After more than two years since I started the case in late 1999, I still did not know anything about Dr. Frank's "considerable contribution", about his "sending out" to the places except the two counts that I found by chances. It was so difficult for me to get answers. Please help me and first let me know the very basic facts: What was Dr. Frank's

Exhibit D-5

real contribution to my SAM work? Has Dr. Frank ever sent his second draft or the "working paper", or the claim of the "working paper" to places other than RRE and Barcelona? With Dr. Becker and Dr. Wright's personal involvement, this case was becoming complicated. 1 know that university politics will continue to work. However, I will continue to find the answer.

I expect that you are able to do that. But if there are university rules protecting Dr. Frank from telling the truth, or if you might have any kind of difficulties, and there is no one on MSU campus who can let Dr. Frank give me answers, would you please let me know directly?

I send you this letter with both a hard copy and an e-version. They are the same except my signature. All letters and documents processed at the lower level are available upon request. Please let me know which ones you want and I will send you directly.

Thank you very much for your consideration.

JiQiang Xu
March 19, 2002

Exhibit E

UNITED STATES
POSTAL SERVICE

Date: 05/07/2002

JIQIANG XU
3030 TRAPPERS COVE TRL APT 3A
LANSING, MI 48910-5892

Dear JIQIANG XU:

The following is in response to your 05/07/2002 request for delivery information on your Certified item number 70010320000149182857. The delivery record shows that this item was delivered on 03/21/2002 at 06:50 AM in EAST LANSING, MI 48824 to B B BRYANS. The scanned image of the recipient information is provided below.

Signature Of Recipient: /s/ _____

Address of Recipient: Su - Stores

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

450 Admin
M 368171

Exhibit F

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910
(517) 887-7357
Xujiqian@pilot.msu.edu
May 11, 2002

Michigan State University
E. Lansing, MI 48824

Dear President Peter McPherson:

In my letter dated March 19, 2002 to you, I reported a case regarding the authorship confusion between my advisor Dr. Ken Frank and me. The post office record shows that this letter was delivered to MSU on March 21, 2002 and received by an MSU employee whose name was B.B. Bryans. I am disappointed because I have not obtained any responses from you, neither to the case, nor to my letter. Now the spring semester was over and I have no idea whether my letter is still in your consideration. I think that a response is less likely coming to me without further effort.

This is my second letter to you reporting the case because it is important to me. In my understanding, this is a case with potential intellectual dishonesty together with MSU officials' personal involvement including covering up and misleading. The MSU officials include even the "Assistant Vice President for Research Ethics and Standards and University Intellectual Integrity Officer." Although the College of Education wanted to consider this case closed at their level, the case will not be closed without a clarification of the authorship confusion. This confusion lasted for years already and hurts me day after day. I will continue to protect my property and right.

I hope to get your response. I hope that you may take care of the case and start the necessary investigation. I expect that the university would be responsible to such a case. But if no response continues, I will make my third and final effort at the university level. That is, I want to try to deliver my report to you in person. I will try to get help from sources including police and media to make my delivery lawful and secure. Doing so, I will make clear whether Michigan State University and you are going to be responsible to the case.

Thank you very much for your consideration.

JiQiang Xu
May 11, 2002

Enclosures
1. Copy of my letter of March 19, 2002.
2. Copy of post office record for delivery information.

Exhibit G

MICHIGAN STATE UNIVERSITY

COLLEGE OF EDUCATION

Associate Dean
External Relations and Student Affairs

Michigan State University
518 Erickson Hall
East Lansing, Michigan
48824-1034

517/355-1787
FAX: 517/353-6393

Student Affairs
517/353-9680
FAX: 517/432-2718
www.educ.msu.edu

August 15, 2002

Mr. JiQiang Xu
3030 Trappers Cove, #3A
Lansing, MI 48910

Dear Mr. Xu:

President McPherson and Provost Simon have requested that I respond to your letters to them regarding your concern with Dr. Frank and your interaction regarding your dissertation research. President McPherson and Dr. Simon concur with my letter to you dated August 13, 2001 in which I indicated

that the University considers the matter closed. You have expired all opportunity to have the matter addressed through the University system and have exceeded the timeframe in which further consideration of your complaint will be reviewed.

As previously indicated, the matter is closed. No further correspondence regarding your concern should be sent to President McPherson, Provost Simon, or the College of Education.

Sincerely,

/s/ _____
Cassandra Book
Associate Dean

cc: President McPherson
Provost Simon
Dr. David Wright

Exhibit H

MICHIGAN STATE UNIVERSITY

OFFICE OF THE PRESIDENT

Michigan State University
450 Administration Building
East Lansing, Michigan
48824-1046

517/355-6560
FAX: 517/355-4670

October 29, 2002

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910

Dear Mr. Xu:

President McPherson shared with me your correspondence of October 14th and asked me to respond. He affirmed what I indicated to you earlier - that it is not appropriate for him to circumvent nor interfere in the investigative process created for these issues.

Again, let me stress on President McPherson's behalf, that you have full and open access to Michigan State University's mechanisms for resolving disputes of this nature. I encourage you to fully engage them.

Sincerely,

/s/ _____

Sue Carter
Secretary of the Board of Trustees and
Executive Assistant to the President

SC/mh

Exhibit I-1

JiQiang Xu
3030 Trappers Cove, 3A
Lansing, MI 48910
(517) 887-7357
Xujiqian@msu.edu
January 7, 2003

Michigan State University
E. Lansing, MI 48824

Dear Sir / Madam:

This is a letter to Michigan State University. Being one of the Executive Officers of Michigan State University, you receive a copy of my letter.

I am a former graduate student of Measurement and Quantitative Method (MQM) Ph.D. program, Department of Counseling, Educational Psychology and Special Education (CEPSE), College of Education (1994-1998). My student ID number was A10916880. My academic advisor was Dr. Ken Frank.

The following four paragraphs are part of my letter dated January 11, 2001 to Dr. Carol Ames, Dean of the College of Education.

"My dissertation was titled 'Parameter Estimation and Interpretation in Spatial Autoregression Models (SAM)'. I have made contributions to SAM in both technical and theoretical aspects. Based on SAM, I have created a new measurement in statistics which makes sense especially in social science; I also generalized the classical 'Factor Analysis' technique which is widely used in statistics. I think

that my paper has its historical importance to SAM, in social sciences, and in statistics.

My advisor and I have got disagreement since early 1997. The core issue is the authorship of my SAM work. As I believe, Dr. Frank had strong intention to take over my paper especially the theoretical development. In his letter of May 18, 1998, Dr. Frank told me that 'you have primarily responsible for the two technical insights.' In his letter of June 22, 1998, Dr. Frank claimed that 'I believe I have made a considerable contribution to the work (of SAM)' with no contents. In reality, in these years, Dr. Frank gave me a total of four points of his own 'new stuff' and expected them to be part of my paper. By doing so, he wanted to share an 'equal authorship' with me as he clearly stated. I found all his four points were errors, none of which was trivial. I rejected all his points with his agreement finally.

It was becoming more serious when I found by chance that Dr. Frank sent a paper which was based on my SAM work but in his name to an international conference at Barcelona behind me in early 1998. Again by chance in August 1998, I found his claim of the existence of a so-called 'working paper' in his article of"Review of Research in Education (RRE)" which he sent to the publisher behind me a year ago. The so-called "working paper' which was with Dr. Frank as the first author, has never existed."

"I wanted to protect my authorship and reported the case to the Department of CEPSE on Oct. 18, 1999. The Chairperson Dr. Prawat assigned Dr. Becker and Dr. Reckase to deal with this case. Since then we got about twenty letters and one informal meeting in

Exhibit I-2

one year. I also delivered a package with 73 pages of 29 copies to Dr. Reckase to answer their four questions on Nov. 29, 1999. However, after for more than one year, I still even didn't know anything about Dr. Frank's 'considerable contribution' to my SAM work. I sincerely appreciated the time and energy Dr. Becker and Dr. Reckase contributed to the case, but I found that their work was unsatisfactory."

When I started reporting the case to the College of Education in January 2001, I was hoping to have the problem resolved at the college level. However, unexpected things came to me. Selected by Dean Carol Ames, university level official Dr. David Wright, the "Assistant Vice President for Research Ethics and Standards and University Intellectual Integrity Officer" was personally involved in the case. On March 11, 2001, Dr. Wright was misleading me in a whole meeting which he tried to call me in to have even before Dr. Ames gave me his name. At a moment in the meeting, he was treating me as a criminal. Although Dr. Cassandra Book, the associate dean of College of Education had confirmed that this case deserved to a college level hearing board service, she later stated that the case was closed because I had "not responded to the opportunity to obtain assistance" from Dr. Stan Soffin, another university level official Dr. Book assigned to me.

I started reporting the case to Michigan State University in March 2002. I sent a total of three certified letters to the President of MSU in March, May and October, 2002. I have noticed that the manner of responses from the office of the President to each of my letters was unusual. I have found that my first letter to the President in March was delivered to MSU but later taken away by some person purposely. It was

then lost without any response to me at all. My second letter to the President in May together with my thereafter frequent phone calls and visits to the office of the President brought about Dr. Sue Carter's phone call to me at my home on July 29, 2002 since I was not allowed even to call her in office. In the phone, I told Dr. Carter "Don't expect that I will lower down the level once this case was reported to the President at the university level." After that phone call, Dr. Carter did not give me responses, nor to a letter which I was allowed to send her with my request to the President. Instead, I received a strange letter dated August 15, 2002 from Dr. Book, the associate dean of College of Education. Without any authorization, Dr. Book claimed that "President McPherson and Provost Simon have requested that I respond to your letters to them regarding your concern with Dr. Frank and your interaction regarding your dissertation research" in her formal letter. Wishing to stop my pursuing, she said: "You have expired all opportunity to have the matter addressed through the University system and have exceeded the timeframe in which further consideration of your complaint will be reviewed." She even said: "No further correspondence regarding your concern should be sent to President McPherson, Provost Simon, or the College of Education." If Dr. Book was truly requested to send me that letter by the President, I am afraid that the President was wanting to stop my pursuing, letting the lower-level official sending me message in his name without his authorization and evading to make direct response to my letter which I sent to him directly. My third letter with strong words to the President in October finally brought me Dr. Carter's letter on President McPherson's behalf dated October 29, 2002, the very first one after I started

Exhibit I-3

sending letters to him for more than seven months.

This case was starting with an authorship confusion between Dr. Frank and me. It has been big now. Dr. Becker was personally involved in the case with her covering-up and lying about a case-related fact when the case was at the department level. Then being selected by and cooperated with Dean of College of Education, Dr. Wright was personally involved in the case with his misleading and treating me badly when the case was at the college level. Now I have found that the office of the President may also have been involved in. Besides what I stated above about the unusual responses to my letters including missing of my first letter, I have found that my student records at Michigan State University may have been searched and falsified by MSU officials. These matters were directly related to persons from the office of the President. Once verified, these matters would be not only violations of my student rights, but violations of the law even federal law. These would be crimes.

This case is important to me but is so difficult to have the necessary investigation started. After for more than three years till now, the authorship confusion has never been even touched. My contribution in statistics with a focus on SAM work was created at Michigan State University, it was actually destroyed at Michigan State University.

Since late 1999, I have reported the case to leaders of all three levels within the University system: the Chairperson of the Department, the Dean of the College and the President of MSU. Finally, Dr. Sue Carter told me in her letter of October 29 that "you have full and open access to Michigan State University's mechanisms for resolving disputes of this nature. I encourage you to fully engage them." That indicated a chance that MSU and I may resolve the problem still within

Michigan State University. She told me that "it is not appropriate for him (the President) to circumvent nor interfere in the investigative process created for these issues" so that the President might want to be away from the procession of the case. I hope that Dr. Carter was not telling me that the President was going to be away from caring of the case, nor away from being responsible to the case. Because the President / Dr. Carter made no assignment of persons to the case, I have to explore by myself. At this time, I decide to write a letter to report the case to Michigan State University by sending copies to you, all thirteen Executive Officers of Michigan State University ("Faculty / Staff Directory, 2002-2003", page 23.) I hope that you would consider the case, decide whether and how to do it within Michigan State University. I think that it would be a true time for you try to do the right thing and restore confidence in the University. Please give me a clear response no matter whatever decision you will make.

The following is my request I wrote in my third letter to the President. It might help for your consideration. I repeat it here to end my this letter.

1. To clarify the authorship confusion between my advisor Dr. Ken Frank and me and find how much my rights were violated;

2. To investigate university officials' personal involvements in the case with a focus on Dr. David Wright's deed including misleading and treating me as a criminal;

3. To investigate my student status and records. Dr. David Wright called me in to have the meeting of March 1, 2001 with only one topic that was as he said: "I'm here to

Exhibit I-4

help you to get your Ph.D degree rewarded." "People will call you Dr. Xu." I want to know what he really wanted to do to help me? Did he want to help me financially? What is my student status then and now? How about my student records at MSU? Are there any non-financial changes in my student records between then and now?

4. To investigate the disappearance of my first letter to the President dated March 19, 2002. This is talking about that piece of mail, not the contents of that letter. After more than four months without any responses from any one, I consider this letter disappeared. The post office record shows that my letter of March 19, 2002 was delivered on "03/21/2002 at 06:50 AM in East Lansing, MI 48824" to a recipient whose address was "MSU-Stores" and name "BB Bryans" with signature. I expect that the university will verify the truthfulness of the recipient's information, find what happened to my letter and whether this recipient will be fully responsible to the disappearance of the letter since it has been a special matter.

Attached are copies of letters for your references. All letters and documents processed in these years are available upon request. Please let me know which ones you want and I will send you properly.

Thank you very much for your consideration.

JiQiang Xu
January 7, 2003

Enclosures

1. My first letter to the President of MSU (March 19, 2002);

2. My second letter to the President of MSU (May 11, 2002);
3. My third letter to the President of MSU (October 14, 2002);
4. Dr. Sue Carter's letter on behalf of the President of MSU (October 29, 2002);
5. Dr. Cassandra Book's letter (August 15, 2002);
6. My letter to Dr. Sue Carter (August 26, 2002);
7. My letter to Dean Carol Ames (February 19, 2002).

Exhibit J

MICHIGAN STATE UNIVERSITY

OFFICE OF RESEARCH ETHICS AND STANDARDS

Assistant Vice President for Research Ethics and Standards

Michigan State University
204 Olds Hall
East Lansing, Michigan
48824

517/432-4500
FAX: 517/353-2976

February 17, 2003

JiQiang Xu
3030 Trappers Cove, #3A
Lansing, MI 48910

Dear Mr. Xu:

I have been asked to respond on behalf of the University to your letter of 7 January 2003, which you indicate was sent to the University's Executive Officers.

In response to your concerns arising out of your interactions with Dr. Frank regarding your dissertation research, in March 2001, the University's College of Education offered you the opportunity to have your concerns reviewed by the college level hearing board pursuant to the GSRR Procedures. For some unknown reason, you chose not to participate in this process.

In response to your later attempts to seek review of your concerns, Dr. Cassandra Book advised you in letters dated 13 August 2001 and 15 August 2002 that your requests were untimely, and that the University considered the matter closed.

In response to your January 7th letter, please be advised that the University's position remains that this matter is closed, and that you waived any right to review of your concerns by failing to participate in the college level hearing offered to you in March 2001. Please also note that I disagree with your characterization of our prior conversations.

Sincerely,

/s/ _____

David E. Wright
Assistant Vice President for Research
Ethics and Standards and
University Intellectual Integrity Officer

c: President Peter McPherson
Provost Lou Anna Simon

APPENDIX F

US DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed March 15, 2005]

JiQiang Xu
Plaintiff

v.

MICHIGAN STATE UNIVERSITY
MICHIGAN STATE UNIVERSITY
COLLEGE OF EDUCATION,
DR. KENNETH A. FRANK,
DR. BETSY J. BECKER,
DR. DAVID WRIGHT,
DR. CASSANDRA BOOK
Defendants

Hon. Richard A. Enslen

NOTICE OF APPEAL

NOTICE IS GIVEN that JeQiang Xu, the above named plaintiff, hereby appeals, to the United States Court of Appeals from a final judgment Dismissing all Federal claims with prejudice and all state law claims without prejudice, entered by the Honorable Richard Alan Enslen, Federal District Court Judge, on the 23d day of February 2005.

A copy is attached,

Dated March 15, 2005 /s/ _____
James D. Lovewell P 16818

US DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 5:04-CV-210

[Filed February 23, 2005]

JIQIANG XU,	)
Plaintiff,	)
	)
v.	)
	)
MICHIGAN STATE UNIVERSITY,	)
MICHIGAN STATE UNIVERSITY	)
COLLEGE OF EDUCATION,	)
DR. KENNETH A. FRANK,	)
DR. BETSY J. BECKER,	)
DR. DAVID E. WRIGHT,	)
DR. CASSANDRA BOOK,	)
Defendants.	)
	)

Hon. Richard Alan Enslen

JUDGMENT

In accordance with the Opinion of this date;

IT IS HEREBY ORDERED that Defendants Michigan State University *et al*'s Motion to Dismiss (Dkt. No. 7) is **GRANTED**, all federal law claims raised are **DISMISSED** with prejudice, and all state law claims are **DISMISSED**

WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1367(c)(3).

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE

DATED in Kalamazoo, MI:
February 23, 2005

APPENDIX G

MICHIGAN STATE UNIVERSITY

OFFICE OF THE PRESIDENT

University Intellectual Integrity Officer

Michigan State University
204 Olds Hall
East Lansing, Michigan
48824-1046

517/432-4500
FAX: 517/353-2976

21 June 2002

TO: M. Peter McPherson, President
Lou Anna K. Simon, Provost

FROM: David E. Wright, University Intellectual Integrity Officer

SUBJECT: Mr. Jiqiang Xu

Both of you have forwarded to me complaints by Mr. Jiqiang Xu, a former student in the Department of Counseling, Educational Psychology and Special Education (CEPSE) in the College of Education, and asked me to look into the matter. I have been aware for eighteen months of Mr. Xu's complaint that one of the members of his dissertation

committee had taken, or was attempting to take, authorship credit for some of Mr. Xu's original work on Spatial Autoregression Models (SAM), especially in creating a SAM statistical measurement and in broadening theory, both for new applications in the social sciences. This dispute was handled Under the Graduate Student Rights and Responsibilities (GSRR) procedures in the College, and I believe it was handled properly. Dr. Cass Book's letter to Peter of 22 March 2002 is, I believe, dispositive and should provide the basis for any reply to Mr. Xu. (See attached.)

As background, I did review the file on this case at the request of Dean Ames and Associate Dean Book early last year after the case was originally handled under the GSRR Procedures in CEPSE and an informal resolution was proposed. Mr. Xu found the proposed resolution unsatisfactory. On review of the file, I was sufficiently concerned that Mr. Xu's claims in this authorship dispute were approaching an allegation of plagiarism against his faculty member to invite Mr. Xu to meet with me, which he did on 1 March 2001. I discussed Mr. Xu's concerns with him, gave him the University's *Procedures Concerning Allegations of Misconduct in Research and Creative Activities,* and explained his rights under the Procedures. Mr. Xu did not file an Allegation of Misconduct.

Instead, Mr. Xu preferred to have the matter addressed under the GSRR Procedures by a College Level Hearing Board in the College of Education. On 20 March 2002 Dean Book wrote to Mr. Xu offering him a Collage Level Hearing and requiring him to submit a formal, written grievance by the end of April if he wanted such a hearing. Mr. Xu did submit a written grievance on 29 April 2002, asking for the College Level Hearing under the GSRR.

However, Mr. Xu apparently did not respond to Dean Book's repeated requests for information to clarify his grievance so that it could be heard by the College Level-Hearing Board. Consequently, on 13 August 2001 she informed Mr. Xu that she considered the matter closed. On 29 August 2001 Mr. Xu responded to Dean Book that he would pursue the matter at higher levels of the University, which he has now done in a series of letters to Peter.

My analysis is that Mr. Xu ultimately chose the venue in which he wished his dispute to be heard. The College Level Hearing under the GSRR Procedures was offered to him, but he did not take advantage of that opportunity. I concur with Dean Book that Mr. Xu cannot reasonably expect further action by the University on this matter.

Therefore, I believe that a response to Mr. Xu would best be drafted by Dean Book, reminding Mr. Xu of the chronology of events and explaining again that he had been offered, but declined to utilize, the appropriate venue in which to seek a remedy for his grievance.

Attachment

C: Robert J. Huggett, Vice President for Research and Graduate Studies
Karen Klomparens, Dean, The Graduate School
Carole Ames, Dean, College of Education
Cassandra Book, Associate Dean, College of Education

APPENDIX H

Cass Book, 02:15 PM 5/16/2002 - 0400, Re: Confidential

Date: Thu, 18 May 2002 14:15:50 - 0400
To: Holly Byrnes <byrnes@msu.edu>
From: Cass Book <cassbook@pilot.msu.edu>
Subject: Re: Confidential

The response needs to be that the College and the University provided Mr. Xu with every opportunity to hear his case and that since he is no longer a student at MSU and the timeframe in which his grievance could be heard has past. Per the letter I wrote him on August 13, 2001, the matter is closed.

Just so you know, I wrote the following to President McPherson on 3/22/02 regarding letters from Xu:

Mr. Jiqiang Xu wrote you on March 19, 2002. Mr. Xu was a doctoral candidate in the Department of Counseling, Educational Psychology and Special Education in the measurement and quantative methods program and has actually completed all requirements for the degree, although he refuses to officially apply for the degree. He was last enrolled in Summer, 1998. Mr. Xu initiated his complaint regarding the relationship of his academic advisor to his own dissertation work in the Department in October, 1999. Since that time, the Department enacted a procedure to investigate his contention and rendered a thorough response to his allegations. He was dissatisfied with the response and in January, 2001 wrote to Dean Ames to further investigate his complaint. The College's study of the situation led us to direct

Mr. Xu to Dr. David Wright of the Office of Intellectual Property. Dr. Wright followed through with his investigation and ultimately I wrote Mr. Xu in March, 2001, directing him to file a formal written grievance for consideration by a college level hearing board and giving him a deadline of the end of April to submit his complaint (with assistance from the Ombudsman). I submitted additional correspondence to Mr. Xu indicating that since I had not received any response from my correspondence to him over that previous five months, I considered the matter closed.

Mr. Xu has been given every opportunity to have his claims heard by a College level hearing board and was even given the benefit of a time extension to the University rules regarding the timeliness of a student filing a grievance. He did not respond. His contention has been thoroughly investigated by a department level encouragement to file a formal grievance at the College level. The time limits for a student filing a grievance have long passed.

I recommend that your office acknowledge receipt of Mr. Xu's letter and indicate that, upon checking with the College, you have found that his claim was investigated appropriately according to the Graduate Students Rights and Responsibilities document and that the time for a grievance to be filed has expired.

Cassandra Book
Associate Dean
College of Education
518 Erickson Hall
MSU

APPENDIX I

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

November 15, 2006

Mr. JiQiang Xu
3030 Trappers Cove
3A
Lansing, MI 48910

Re: JiQiang Xu
v. Michigan State University, et al.
Application No. 06A494

Dear Mr. Xu:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on November 15, 2006 extended the time to and including January 22, 2007.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by /s/ _____
Erik A. Fossum
Case Analyst

APPENDIX J

MICHIGAN STATE UNIVERSITY
OFFICE OF THE GENERAL COUNSEL

Michigan State University
494 Administration Building
East Lansing, MI
48824-1046

517/353-3530
FAX:517/432-3950

September 15, 2006

James D. Lovewell
Attorney at Law
617 N. Capitol Avenue
Lansing, Michigan 48933

Via Facsimile 517-484-6345

Re: Xu v MSU, et al

Dear Mr. Lovewell:

In response to your recent Letter, the Department long ago gave you Mr. Xu's student records. We have nothing additional to give you.

Very truly yours,
/s/ _____
Theresa Kelley

APPENDIX K

James D. Lovewell
Attorney at Law

617 North Capitol Avenue
Lansing, Michigan 48933
(517) 420-2348

Michigan State University
Office of Registrar
East Lansing, Michigan 48824

RE: Record Request
Student Xu, JiQiang
A 10916880

Dear Sir or Madam,

My office has been retained by Mr. JiQiang Xu in regards to documents in your possession. He was a student in the College of Education seeking a doctorate in Measurement and Quantitative Methods (MQM) program.

In March 2005 he had sought a copy of his entire student file. Due to recent discovery of internal letters, between/among university officials, regarding Mr. JiQiang Xu, his student files at Michigan State University are once again requested. That should include but not be limited to:

All related forms, letters, or E-mails sent to and from between/among university officials including (1) Then

President McPherson, then Provost Simon, Vice President Robert J, Huggett, Dr. David E. Wright, Dr. Sue Carter and/or their offices; (2) Graduate School Dean Karen Klomparens, Dean of Education Carole Ames, Associate Dean of Education Cassandra Book and/or their offices; (3) Dr. Mark D. Reckase, Dr. Betsy J. Backer, Dr. Ken A. Frank of Department of CEPSE and/or their offices.

Also any other forms, letters, or E-mails related to or containing the name of Mr. JiQiang Xu.

Please indicate the number of pages sent.

A release signed by Mr. Xu is set forth below.

/s/ _____

James D. Lovewell P 16818
Attorney at Law
617 N. Capitol Avenue
Lansing, MI 48933

Release - Michigan State University

I, JiQiang Xu hereby authorize you to release all forms, letters, or E-mails or any other documents requested by my attorney James D. Lovewell, in your possession.

Dated: 9/12/2006 /s/ _____

JiQiang Xu